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Supreme Court, U.S.
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No. _____

In The
Supreme Court Of The United States

OCTOBER TERM, 1990

R. R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Whether ERISA § 4(b)(3), which exempts from ERISA coverage plans maintained solely to comply with applicable workers' compensation laws, "saves" from preemption section 31-284b of the Connecticut General Statute which, as the Second Circuit found, "relates to" plans that ERISA covers in that it requires employers--and only those employers--who sponsor accident, health, or life insurance benefit plans for their active employees to provide "equivalent" benefits to inactive employees who are eligible to receive workers' compensation, because the state statute gives employers the option of complying by establishing a separate accident, health, or life insurance benefit plan.

LIST OF PARTIES

The parties to the proceeding below were the respondents, Judy Prevost; Gerald Kolinsky, Compensation Commissioner, Eighth District, State of Connecticut; John A. Arcudi, Chairman, Board of Compensation Commissioners, State of Connecticut; Joseph I. Lieberman, Attorney General, State of Connecticut; and petitioner, R.R. Donnelley & Sons Company. Richard Blumenthal is now Attorney General of the State of Connecticut. In addition, the parties to an action that was consolidated with this action at the District Court and the Court of Appeals were as follows: plaintiff-appellant, O & G Industries, Inc.; defendants-appellees, John A. Arcudi; Gerald Kolinsky; Edward F. Bradley; Gregory Gorman; and Sharon Ferrillo Petrushonis; and amicus curiae, United Automobile, Agricultural Implement and Aerospace Workers, AFL-CIO and District 91, International Association of Machinists and Aerospace Workers, AFL-CIO.

R.R. Donnelley & Sons Company has no corporate parent. R.R. Donnelley & Sons Company has two corporate subsidiaries that are not wholly-owned: it owns a seventy-one percent interest in The Lakeside Bank, which is located in Illinois; and it owns a seventy-eight percent ownership interest in Dowa Insatsu K.K., which is located in Japan.

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IN THE SUPREME COURT OF THE UNITED STATES

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R. R. DONNELLEY & SONS COMPANY,

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JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, R. R. Donnelley & Sons Company ("Donnelley" or "Petitioner"), respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered in the above-entitled proceeding on September 24, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported at 915 F.2d 787, and is reprinted in the appendix hereto, at App. A1 (hereinafter references to the appendix will be to "App. A__").

The opinion of the United States District for the District of Connecticut (Dorsey, P.C.), has not been reported and is reprinted in the appendix at App. A18.

JURISDICTION

Petitioner invoked the federal question jurisdiction of the District Court pursuant to 28 U.S.C. § 1331 (1988) and 29 U.S.C. § 1132(e)(1) (1988). The District Court entered its opinion granting respondents' motion for summary judgment and denying petitioner's motion for summary judgment on April 12, 1989. Judgment was entered on that opinion on April 12, 1989. App. A28.

Petitioner appealed from the judgment of the District Court, and on September 24, 1990, the Court of Appeals for the Second Circuit entered a judgment and an opinion affirming the judgment of the District Court. On November 1, 1990, the Second Circuit denied petitioner's motion for rehearing and suggestion for rehearing in banc. App. A32.

This petition for a Writ of Certiorari has been filed within 90 days of November 1, 1990. This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1) (1988).

STATUTES INVOLVED

The question presented addresses the effect of sections 4(b)(3) and 514 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S.C. §§ 1003(b)(3) and 1144 (1988), on Conn. Gen. Stat. § 31-284b (1989). These statutes as well as related provisions of ERISA and of the Connecticut General Statutes referred to in this petition are reprinted in the Appendix at A51-A60.

STATEMENT OF THE CASE

The Challenged Statute

Section 31-284b(a) of the Connecticut General Statutes creates an obligation imposed only on employers who sponsor employee welfare benefit plans that provide accident, health or life insurance for active employees: the state law requires such employers to provide "equivalent" coverage to employees eligible for workers' compensation. App. A59. Paragraphs (b) and (c) of Section 31-284b provide plan sponsors with various options for carrying out the obligation created in paragraph (a). Petitioner believes that this statute impermissibly "relates to" ERISA-covered plans because the only target of its obligation is ERISA plan sponsors and because its obligation is measured only in terms of the benefits provided to active employees through ERISA-covered plans. The Second Circuit, however, while conceding that the statute relates to ERISA-covered plans, held that the options for compliance provided in the statute save the entire statute from ERISA preemption.

The statutory predecessor to section 31-284b, Conn. Gen. Stat. § 31-51h (1981) (App. A50), was held to be preempted in *Stone & Webster Engineering Corp. v. Ilsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983). Section 31-284b differs

from its preempted predecessor in only one respect: the old law prohibited an employer from removing from its ERISA benefit plan those employees who were eligible to receive workers' compensation, while the new statute gives the employer the option of keeping such employees in the plan or providing "equivalent" coverage through a separately administered plan. *Compare* Conn. Gen. Stat. § 31-51h *with* Conn. Gen. Stat. § 31-284b.

Section 31-284b does not differ from its statutory predecessor in the nature of the obligation it imposes on ERISA plan sponsors. Under both statutes, the only employers required to provide benefits are those who provide health, accident and life insurance coverage to their active employees -- i.e., employers who sponsor welfare benefit plans covered by ERISA. Both statutes also measure the extent of each employer's obligation according to the level of benefits that the employer provides to its active employees in its ERISA-covered plan. Thus, regardless of the options for compliance, the obligation to provide benefits "relates to" ERISA-covered plans for active employees.

The Roles of the Parties

Petitioner is a multi-state employer that conducts business in Connecticut through its Old Saybrook Manufacturing Division. App. A45. Donnelley sponsors employee welfare benefit plans covered by ERISA. *See* ERISA § 3(1), 29 U.S.C. § 1002(1) (1988). Donnelley's ERISA-covered plans provide life insurance and health and dental benefits to its active employees in Connecticut and numerous other states. App. A33-A35. Donnelley's plans and its employment policies allow employees who are continuously absent from work due to illness, injury or plant accident to remain in active status, and thus to remain eligible to receive benefits, for up to two years. Upon termination of active status, employees may convert or extend their life, health or dental coverage at their own expense. App. A36.

Respondent Judy Prevost began working for Donnelley's Old Saybrook Division in 1983. App. A36. Thereafter, Ms. Prevost allegedly suffered work-related injuries. App. A36. She has been continuously absent from work from May 1, 1986 to present, except for a brief return to work in February 1987. App. A36. Throughout this period of time, Ms. Prevost has been eligible to collect and has collected workers' compensation benefits under Connecticut law. *Id.*

In accordance with the terms of its ERISA-covered plans, Donnelley advised Ms. Prevost by letter dated May 2, 1988 that her active status would terminate on May 25, 1988. Donnelley further advised Ms. Prevost of her right to convert her life insurance to individual policy coverage and to continue health and dental benefits coverage at her own expense under ERISA, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). App. A37. Donnelley terminated Ms. Prevost's dental benefits on May 25, 1988, health benefits on June 25, 1988, and life insurance on June 26, 1988. *Id.*

Notwithstanding the terms of Donnelley's ERISA-covered plans, respondent Kolinsky, a Connecticut Workers' Compensation Commissioner, advised Donnelley to continue to provide coverage to Ms. Prevost. App. A37-A38. In particular, Kolinsky wrote to Donnelley on May 19, 1988 that section 31-284b of the Connecticut General Statutes "requires an employer to continue to provide to an injured employee continuing coverage for group accident and health insurance or life insurance coverage while the employee is eligible to receive or is receiving workers' compensation payments." *Id.*

The District Court Proceedings

In June of 1988, Donnelley filed the Complaint in this action, seeking both a declaratory judgment that ERISA preempts section 31-284b and an injunction prohibiting the State from seeking to enforce this statute against Donnelley. App. A44. Federal question jurisdiction existed for this Complaint pursuant to 28

U.S.C. § 1331(1988) and 29 U.S.C. § 1132(e)(1)(1988). The District Court consolidated this action with a later-filed suit in which O&G Industries, Inc. sought the same relief. The parties in this case and the consolidated action filed cross-motions for summary judgment. On April 12, 1989, the District Court entered judgment granting respondent's cross-motions for summary judgment and denying Donnelley's and O & G's motions. App. A28.

The District Court held that section 31-284b "'relates to' employee benefit plans covered by ERISA and is preempted by 29 U.S.C. § 1144(a)." App. A24. But the Court went on to hold that section 31-284b is not preempted because the plans to which it relates are exempt under ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3). App. A27.

The Opinion of the Second Circuit

The Second Circuit began its analysis of section 31-284b by quoting the holding in *Stone* that section 31-284b's predecessor, section 31-51h, "constitute[d] a forbidden state encroachment on a private employee benefit plan" and that the law's "only purpose [was] to add an additional statutory requirement--the cost of which is to be borne by the employer--to a private employee benefit plan." App. A9 (quoting *Stone*, 690 F.2d at 329). The Second Circuit found it clear that section 31-284b "has precisely the same impact upon private employee benefit plans that we discerned former section 31-51h to have in *Stone*." App. A9. Despite this explicit finding that Section 31-284b relates to ERISA-covered plans, the Court held that section 31-284b escapes ERISA pre-emption.

The Court compared the options for compliance in paragraphs (b) and (c) of section 31-284b to statutory options that were discussed in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 107-108 (1983). App. A13-A14. *Shaw*, in dictum, noted that a state disability benefits statute would not run afoul of ERISA by requiring employers "to choose between providing disability benefits in a separately administered plan and including the state-mandated

benefits in its ERISA plan." App. A13 (quoting *Shaw*, 463 U.S. at 108). The Second Circuit reasoned that paragraphs (b) and (c) of section 31-284b simply force employers to make the same kind of election that *Shaw* hypothesized. App. A13-A14. Having found that the options in paragraphs (b) and (c) of section 31-284b were permissible under *Shaw*, the Second Circuit concluded that the entire statute was "saved" from preemption "because it falls within the exception to preemption provided by 29 U.S.C. § 1003(b)(3) (1988)." App. A14. This Petition seeks relief from the holding of the Second Circuit.

REASONS FOR GRANTING THE WRIT

Summary of Argument

The Second Circuit correctly concluded that section 31-284b "relates to" ERISA-covered plans within the meaning of ERISA §3(1). Having concluded that Section 31-284b relates to ERISA-covered plans within the scope of ERISA's preemption provision, the Second Circuit should have ended its inquiry with respect to preemption. Clear precedents of this Court hold that such a relationship, once found, forecloses any further consideration of "saving" the state statute from ERISA preemption.[1]

Section 4(b)(3) of ERISA does not "save" state laws that relate to ERISA-covered plans. The structure of the exemption and preemption provisions of sections 4(b)(3) and 514(a) of ERISA, respectively, contradicts the effort by the Second Circuit to "save" a state statute that relates to ERISA-covered plans. The Second Circuit misread this Court's decision in *Shaw* to support such an effort by ignoring the fundamental difference between Section 31-284b and

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[1] This law does not fall within the ERISA saving clause, which allows states to regulate insurance, banking, and securities. *Infra*, note 5.

the state statute at issue in *Shaw*. Unlike the statute at issue in *Shaw*, section 31-284b applies only to employers who sponsor ERISA-covered plans and measures its obligations according to the benefits provided by those plans. By ignoring that difference, the Second Circuit misread *Shaw* and violated *Shaw's* precepts regarding the proper application of ERISA §4(b)(3) to state workers' compensation and disability statutes.

The Second Circuit's misreading of *Shaw* and ERISA § 4(b)(3) places this case in direct conflict with applicable decisions of this Court. Sup. Ct. R. 10.1.(c) (1990). For this reason, the writ should be granted and the Second Circuit's decision should be summarily reversed.

Furthermore, this case warrants certiorari not only because the Second Circuit's opinion is demonstrably wrong, but also because of the nature of the error and the importance of principles at issue. Sup. Ct. R. 10.1.(c). The Second Circuit failed to recognize that its opinion will undermine the national uniformity of laws applicable to ERISA-covered plans. The decision of the Second Circuit would permit other states to enact requirements similar, but not identical, to those of section 31-284b, thus imposing inconsistent burdens on multi-state employers.

Section 31-284b illustrates a growing practice among the states to "piggyback" mandated welfare benefits on ERISA-covered plans. The existence of the ERISA-covered plan forms the premise of such state obligations, and those obligations are often measured by the level of benefits provided under the ERISA-covered plan. Such state practices are clearly foreclosed by section 514(a) of ERISA.

Finally, the opinion of the Second Circuit creates a new and gaping hole in ERISA preemption. As Connecticut did here, a state statute previously held by this Court to be preempted by ERISA could be resurrected and made preemption-proof by recodifying it in the State workers' compensation, disability or unemployment

compensation laws and providing a nominal option for compliance through a "separately administered" plan.

I. Although The Second Circuit Properly Concluded That Section 31-284b "Relates To" ERISA-Covered Plans, It Improperly Read ERISA § 4(b)(3) And *Shaw* To "Save" The State Law

ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." ERISA § 514(a), 29 U.S.C. § 1144(a). The Second Circuit expressly found that "section 31-284b has precisely the same impact upon private employee benefit plans that we discerned former section 31-51h to have in *Stone*." App. A9. Moreover, the Court stated: "we have little difficulty in concluding that Section 31-284b 'relate[s] to' employee benefit plans within the meaning of 29 U.S.C. § 1144(a) (1988)." App.A9.

The Second Circuit's conclusion that the Connecticut law relates to ERISA-covered plans was inescapable because section 31-284b(a) requires only those employers who provide welfare benefits to their active employees to provide "equivalent" benefits to employees who are eligible to receive workers' compensation. Thus, the existence of an ERISA-covered benefit plan is a "critical factor" in establishing an employer's obligation to provide coverage to employees eligible to receive workers' compensation. *Ingersoll-Rand*, ___ U.S. ___, 111 S. Ct. 478, 483 (1990). "[T]here simply is no [obligation] if there is no plan." *Id.* at 484 (emphasis in original).[2] Accordingly, the Second Circuit properly concluded that section 31-284b "relates to" ERISA-covered employee benefit plans.

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[2] Section 31-284b also relates to ERISA-covered plans in that it makes express reference to "accident and health insurance" and "life insurance," which are benefits provided by "employee welfare benefit plans" within the meaning

(*Continued . . .*)

After concluding that section 31-284b relates to ERISA-covered plans, the Second Circuit should simply have declared that the state law was preempted by the express terms of ERISA § 514(a), 29 U.S.C. § 1144(a). Unfortunately, the Court erroneously undertook to determine whether section 31-284b was somehow "saved from preemption" by ERISA § 4(b)(3). App. A9. In the process, the Second Circuit significantly departed from controlling precedent of this Court and lost sight of the dispositive nature of its conclusion that section 31-284b relates to plans covered by ERISA.

In *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), this Court made clear that "[t]he only relevant state laws, or portions thereof, that survive [preemption under ERISA § 514(a)] are those relating to plans that are themselves exempted from ERISA's scope." 451 U.S. at 523, n.20 (1981). *Alessi* held that a provision of a New Jersey statute prohibiting the offset of pension benefits provided by ERISA-covered pension plans "related to" such ERISA-covered plans and thus was preempted. Upon finding the relationship of the state statute to ERISA-covered plans, this Court needed no further inquiry even though the statute was codified in the workers' compensation laws. 451 U.S. at 524-26.

This Court's recent decision in *Ingersoll-Rand Co. v. McClendon* again found the relation between the state law (there, a state cause of action for wrongful discharge from employment) and

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(. . . *Continued*)

are benefits provided by "employee welfare benefit plans" within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). Furthermore, section 31-284b also refers to an "employee welfare benefit fund," which falls within ERISA's definition of an "employee welfare benefit plan." *Compare* Conn. Gen. Stat. §§ 31-53(h), 31-284b(a) *with* ERISA § 3(1), 29 U.S.C. § 1002(1). Thus, section 31-284b "expressly refers to - indeed solely applies to - ERISA employee benefit plans." *Mackey v. Lanier*, 486 U.S. 825, 829 (1988).

an ERISA-covered plan to be dispositive. 111 S. Ct. at 482-84.[3] As in *Alessi*, the conclusion in *Ingersoll-Rand* that the state law "related to" an ERISA-covered plan was sufficient to find preemption. 111 S. Ct. at 482-84.

A plain reading of ERISA § 514(a), as illustrated by this Court's analysis in *Alessi*, *Ingersoll-Rand*, and other cases,[4] directly refutes the Second Circuit's assumed authority to search for (and, ultimately, to find) a basis for "saving" a state statute that had been found to relate to ERISA-covered plans.

ERISA § 4(b)(3) does not "save" from preemption any law that relates to plans covered by ERISA.[5] Rather, ERISA § 4(b)(3) exempts from ERISA coverage plans maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation or disability insurance laws. The only state laws that avoid preemption by virtue of ERISA § 4(b)(3) are those laws that relate exclusively to plans within this exemption--i.e., state laws that do not relate to plans covered by ERISA. *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523 & n. 20; *Shaw*, 463 U.S. at 106. The exemption in ERISA § 4(b)(3) "has no bearing on" state laws that relate to ERISA-covered plans, "which more broadly serve employee needs . . . ." *Alessi*, 451 U.S. at 523, n. 20. Since section 31-284b requires an employer to provide health

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[3] The Court in *Ingersoll-Rand* also held that the state law was impliedly preempted because it conflicted with substantive provisions of ERISA. *Ingersoll-Rand*, 111 S.Ct. at 484-86.

[4] *See, e.g., Mackey v. Lanier*, 486 U.S. at 829 ("we have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under §514(a);" citations omitted).

[5] The only exception to ERISA preemption that "saves" state laws "relat[ing] to" ERISA-covered plans is inapplicable to section 31-284b. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), provides an express "saving clause" which excepts from preemption state laws that regulate insurance, banking, or securities. *See, e.g., Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 45 (1987)(describing the mechanics of the insurance saving clause). No party did or could argue that Section 31-284b fell within this saving clause.

and life benefits that are not required by the terms of the employer's ERISA-covered plan--but which are measured by the benefits provided under those plans--the statute does not relate solely to any exempt workers' compensation plan, if indeed a separately administered plan that provides such benefits could ever be considered exempt under ERISA § 4(b)(3).[6] Thus, ERISA § 4(b)(3) does not and can not "save" section 31-284b(a), because this state law relates to ERISA-covered plans for active employees.

The Second Circuit's stated basis for saving section 31-284b from preemption despite its acknowledged relation to ERISA-covered plans was this Court's decision in *Shaw*. However, only by significantly misreading *Shaw* could the Second Circuit have concluded that a state law that relates to ERISA-covered plans and burdens those plans could be "saved" from preemption.

At issue in *Shaw* was a New York Disability Benefits Law ("DBL")[7]. The DBL required all employers to provide disability benefits to eligible employees in the amount of $95 per week or one-half of the employee's weekly wages, whichever was less. DBL, N.Y. Work. Comp. Law §§ 204.2, 205.1 (McKinney 1965 and

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[6] It is even questionable whether a state law mandating health and life insurance benefits can be fairly characterized as a workers' compensation law. Several Circuits have held that ERISA prohibits regulation of non-exempt ERISA plans even if the regulation appears in the guise of a workers' compensation law. *See, e.g., PPG Indus. Pension Plan A (CIO) v. Crews*, 902 F.2d 1148, 1150-1151 (4th Cir. 1990); *Employee Benefits Committee of the Retirement Sys. of Hawaiian Tel. Co. v. Pascoe*, 679 F.2d 1319, 1322-1323 (9th Cir. 1982); *Kapuscinski v. Plan Administrator*, 658 F.2d 427, 430 (6th Cir. 1981)). The history of section 31-284b suggests that the legislature believed that all it was doing was re-labeling the substance of section 31-284b's preempted predecessor as a worker's compensation statute. *Infra*, note 10; *see Alessi*, 451 U.S. at 525 ("[i]t is of no moment that [the state] intrudes indirectly through a workers' compensation law, rather than directly, through a statute called 'pension regulation'").

[7] *Shaw*, 463 U.S. at 89-90 (describing the Disability Benefits Law, N.Y. Work Comp. Law §§ 200-242 (McKinney 1965 and Supp. 1982-1983)).

Supp. 1982-1983). Unlike the "equivalent" coverage for accident and health benefits or life insurance mandated by section 31-284b(a), weekly wages are not provided through "employee welfare benefit plans" and thus are not covered by ERISA.[8] Thus, *Shaw* did not concern a state statute that premised employers' obligations on the existence of ERISA-covered plans. *See, Ingersoll-Rand*, 111 S. Ct. at 483. Instead, the DBL made no reference to ERISA-covered plans.

Shaw rejected an employer's argument the DBL was preempted simply because the employer chose to provide wage substitution benefits through its ERISA-covered plan. *Shaw*, 463 U.S. at 107-08. This Court noted, however, that New York could require such employers to pay the mandated benefits through separately administered plans, which would be exempt under ERISA § 4(b)(3). *Id.* Alternatively, the state could allow employers to provide these benefits through their ERISA-covered plans. *Id.* The state statute did not impermissibly "relate to" ERISA-covered plans merely by allowing employers, at their own option, to use ERISA-covered plans to pay the mandated benefits. *Id.*

The permissive use of ERISA plans to carry out a valid state disability law requirement was the only relationship to ERISA-covered plans sanctioned in *Shaw*. The Court in *Shaw* was careful to note that the State of New York could "not require an employer to alter its ERISA plan," and could "not enforce the disability law provisions through regulation of ERISA-covered benefit plans." *Shaw*, 483 U.S. at 108-109. Indeed, *Shaw* is best known for its expansive reading of ERISA preemption. *See, e.g., FMC Corp. v. Holliday*, ___ U.S. ___, 111 S.Ct. 403, 407-408 (1990). Thus, it is ironic that the Second Circuit should cite *Shaw* to uphold section

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[8] ERISA § 3(1), 29 U.S.C. § 1002(1); 29 C.F.R. § 2510.3-1(b)(1) (1990)("employee welfare benefit plan" does not include "[p]ayment by an employer of compensation on account of work performed by an employee...."). App. A55.

31-284b, because the imposition of obligations on ERISA plan sponsors based upon the terms of their ERISA-covered plans is the regulation of those plans.

Moreover, the Court in *Shaw* did not construe section 4(b)(3) of ERISA in a way that supports the opinion of the Second Circuit in this case. Section 31-284b does not, as the Second Circuit concluded, "fall within the parameters of the *Shaw* ruling." App. at A14. The fundamental error of the Second Circuit in reading the *Shaw* Court's analysis of section 4(b)(3) of ERISA was to equate a state statute's provision of alternative means of compliance, one of which is a separately administered plan, with the "exemption" of such statute from ERISA preemption. As discussed above, section 4(b)(3) of ERISA exempts "plans" not "state laws." Nevertheless, the Second Circuit concluded that section 31-284b "falls within the exception to preemption provided by [section 4(b)(3)]." App. A14. The Second Circuit obviously failed to understand that this Court's discussion in *Shaw* of "separate administrative units," "separately administered plans" and "separate plans" was set forth in the context of a state statute whose *only* relationship to ERISA-covered plans was the permissible use of such plans to provide validly mandated benefits. Regardless of whether compliance can be accomplished outside of ERISA-covered plans, ERISA preempts state laws that create liabilities based upon the existence of ERISA-covered plans. *Ingersoll-Rand*, 111 S. Ct. at 483-86 (rejecting the argument that the nature of the payment--in this case, money damages--removes the link between state law obligations that are premised on ERISA-covered plans).

II. The Second Circuit Opinion Creates A Dangerous Precedent That Threatens To Undermine The National Uniformity Of Laws Applicable To ERISA-Covered Plans And To Eradicate Preemption Of Certain Laws That Piggyback Onto Existing Benefit Plans.

The Second Circuit failed to recognize the consequences of its holding with respect to employers like Donnelley who sponsor ERISA-covered plans that extend to employees in several states. States may impose conflicting requirements on sponsors of multi-state plans: other states may mandate benefits at levels that differ from Connecticut's requirements in Section 31-284b (e.g. 80% of the coverage provided to active employees), or they may set different mandatory time limits for providing these benefits (e.g. for up to one year of workers' compensation eligibility). Furthermore, other states may target other ERISA plan benefits (e.g. severance pay). Thus, employers who sponsor interstate benefit plans will not only be burdened by Connecticut because of their ERISA-covered plans; they may well be burdened inconsistently by other states.

"Section 514(a) [of ERISA] was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefit laws; the goal was to minimize the administrative and financial burden of complying with conflicting directives among states or between states and the Federal Government." *Ingersoll-Rand*, 111 S.Ct. at 484 (citing *FMC Corp. v. Holliday*, 111 S.Ct. at 409; *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11 (1987); *Shaw*, 463 U.S. at 105, and n.25). By imposing an additional statutory requirement based upon the existence and terms of ERISA-covered plans, section 31-284b "subject[s] plans and plan sponsors to burdens not unlike those Congress sought to foreclose through [ERISA] § 514(a)." *Ingersoll-Rand*, 111 S.Ct. at 484.

Connecticut and other states have been drawn inexorably to regulate ERISA plans and plan sponsors. States do not ignore the already enormous and still growing economic stature of employee

benefits and benefit plans. Administratively, states find the benefits prescribed in ERISA plans to be easy and logical targets. Thus, state laws often "piggyback" onto existing ERISA plans, imposing additional obligations that are pegged to pension or welfare benefits provided to active employees.[9]

This case tells a cautionary tale about one state's desire to regulate ERISA-covered plans. *Stone* was the first chapter: Connecticut could not directly prohibit employers from excluding from their ERISA-covered plans employees who were eligible to receive workers' compensation. Section 31-284b was the second chapter: undeterred by *Stone*, Connecticut moved the same, substantive obligation from the labor section to the workers' compensation section of its statutes,[10] and gave employers various options for compliance. In the third chapter, the Second Circuit permitted Connecticut's end-run around the substance of ERISA's

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[9] *See, e.g., Ingersoll-Rand*, 111 S. Ct. at 483-84 (Texas common law cause of action based upon the existence of a pension plan); 1989 N.J. Laws 261 (requiring employers to maintain existing health coverage on the same terms for employees who take family leave); Cal. Ins. Code § 10123 (West 1990) (requiring extension of coverage to dependents if self-insured welfare benefit plan extends coverage to employee after termination); Conn. Gen. Stat. § 31-51o (1989) (requiring employers to maintain existing group health coverage at employer cost for up to 120 days after a plant closing); Mass. Gen. L. ch. 175, §§ 110D, 110G; ch. 176A, § 8D; ch. 176B, § 6A; ch. 176G, § 4A (1990) (plant closing law requiring continuation of existing group health coverage on same terms for up to 90 days); Nev. Rev. Stat. § 689B.245 (1989) (requiring that employers, otherwise exempt from COBRA, 29 U.S.C. §§ 1161-1168, offer continuation of existing group health coverage).

[10] The Connecticut Attorney General aptly summarized the legislative history of section 31-284b as follows:

> Section 31-284b was enacted for the purpose of bringing the requirements of section 31-51h into the Workers' Compensation Act <u>without substantive change</u>, in response to the District Court decision in *Stone & Webster*, [518 F. Supp. 1297 (D. Conn. 1981)].

1984 Op. Att'y Gen. 357, 361-62 (Conn.) (emphasis added). App. A66.

preemption provision. To Connecticut and other states, the moral of this story is clear: simply by giving options for compliance, states may piggyback certain obligations onto ERISA-covered plans and plan sponsors.

The Second Circuit opinion in *Donnelley* provides states with a road map for circumventing ERISA preemption with respect to piggyback laws in the areas mentioned in ERISA § 4(b)(3)--namely, workers' compensation, disability benefits, and unemployment compensation. Under the Second Circuit approach, states may premise and measure employers' obligations to provide these kinds of benefits based upon the terms of each employer's ERISA-covered plan.

The Second Circuit opinion creates a gaping hole in ERISA preemption. States may now achieve the same results that ERISA and the courts had previously thwarted. For example, *Alessi* struck down a New Jersey workers' compensation statute. The New Jersey law provided that the injured employee's right to compensation payments "shall not be set off against [his or her] retirement pension benefits or payments." 451 U.S. at 508 (quoting N.J. Stat. Ann. § 34:15-29 (West Supp. 1980-1981) (as amended by 1977 N.J. Laws, Ch. 156)). Based on the Second Circuit's opinion in this case, however, New Jersey could achieve the same result: the State could mandate that, in the event a pension plan reduced the level of payments based on receipt of workers' compensation benefits, the employer must reimburse the employee for the lost pension income through a separately administered plan.[11]

---

[11] This example and this case illustrate the apparent ease with which states can regulate ERISA plans by imposing obligations on plan sponsors. Connecticut has decided that employers ought to continue accident, health and life plan benefits on behalf of inactive employees who are eligible to receive workers' compensation, notwithstanding the employers' right under ERISA to limit plan participation to active employees. Because it cannot order an

(*Continued . . .*)

The Second Circuit failed to heed this Court's observation in *Alessi* that ERISA precludes states "from avoiding through form the substance of the preemption provision." 451 U.S. at 525. While acknowledging that section 31-284b "has precisely the same impact on private employee benefit plans" as its preempted predecessor, the Second Circuit sustained this "additional statutory requirement" based upon the presence of various options for compliance. App. A13-A14. Thus, the Second Circuit wrongly concluded that permissible forms of compliance somehow cure the substantive impermissibility of the relationship between section 31-284b(a) and ERISA-covered plans.

This blatant circumvention of preemption, which Connecticut attempted and the Second Circuit allowed, will necessarily foil the Congressional goal of national uniformity in the regulation of ERISA-covered plans. The obvious option for employers to avoid section 31-284b and other state laws that piggyback onto the terms of ERISA-covered plans is simply to avoid these plans altogether. *FMC Corp*, 111 S.Ct. at 408; *Fort Halifax*, 482 U.S. at 11. Ultimately, this will harm the very employees that Congress intended to protect.

(. . . *Continued*)

employer to change the terms of its plan, the State imposes a cost on employers whose plans it finds wanting. Under section 31-284b(a), the fee matches the "deficiency" in the ERISA-covered plan: the employer must provide "equivalent" coverage within or outside of the plan.

CONCLUSION

For the reasons stated above, this Court should grant its Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit in this matter.

Respectfully submitted,

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No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1990

R. R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,
Respondents.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 1527, 1528 - August Term, 1989

(Argued: October 5, 1989 Decided: September 24, 1990)

Docket Nos. 89-7467, 89-7481

R.R. DONNELLEY & SONS CO.,

Plaintiff-Appellant,

v.

JUDY PREVOST; GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; J OHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; CLARINE NARDI RIDDLE, Attorney General, State of Connecticut,

Defendants-Appellees,

UNITED AUTOMOBILE, AGRICULTURAL IMPLEMENT AND AEROSPACE WORKERS, AFL-CIO and DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Amici Curiae.

O & G INDUSTRIES, INC.,

Plaintiff-Appellant,

v.

JOHN ARCUDI, EDWARD F. BRADLEY, GERALD KOLINSKY, GREGORY GORMAN and SHARON FERRILLO PETRUSHONIS,

Defendants-Appellees.

Before:

NEWMAN, PRATT, and MAHONEY,

Circuit Judges.

Appeals from a judgment of the United States District Court for the District of Connecticut, Peter C. Dorsey, *Judge*, declaring that Conn. Gen. Stat. § 31-284b (1989) is not preempted by the Employee Retirement Income Security Act of 1974.

Affirmed.

DANIEL L. FITZMAURICE, Hartford, Connecticut (Thomas Z. Reicher, Felix J. Springer, Day Berry & Howard, Hartford, Connecticut, of counsel), *for Plaintiff-Appellant R.R. Donnelley & Sons Co.*

THOMAS J. JOYCE, Hartford, Connecticut (Thomas M. Cloherty, Murtha, Cullina, Richter and Pinney, Hartford, Connecticut, of counsel), *for Plaintiff-Appellant O & G Industries, Inc.*

ARNOLD B. FEIGIN, Assistant Attorney General of the State of Connecticut, Hartford, Connecticut (Clarine Nardi Riddle, Attorney General of the State of Connecticut, Hartford, Connecticut, of counsel), *for Defendants-Appellees Gerald Kolinsky, John A. Arcudi, Clarine Nardi Riddle, and Edward F. Bradley.*

BIANCA D. MACKEY, Hartford, Connecticut, (Ashcraft & Gerel, Hartford, Connecticut, of counsel), *for Defendant-Appellee Gregory Gorman.*

Geraldine Battistoli, Westbrook, Connecticut, *for Defendant-Appellee Judy Prevost.*

Lindalea P. Ludwick, New Haven, Connecticut (Sklarz & Early, New Haven, Connecticut, of counsel), *for Defendant-Appellee Sharon Ferrillo Petrushonis.*

MAHONEY, *Circuit Judge*:

This appeal is brought by plaintiffs-appellants R.R. Donnelley & Sons Co. ("Donnelley") and O & G Industries, Inc. ("O & G") (collectively, the "Employers") from a judgment of the United States District Court for the District of Connecticut, Peter C. Dorsey, *Judge*. The Employers, entities maintaining employee welfare benefit plans within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1) (1988), brought actions seeking a declaration that Conn. Gen. Stat. § 31-284b (1989), which requires Connecticut employers to continue equivalent accident and health insurance and life insurance coverage, or welfare fund payments, for employees eligible to receive workers' compensation,[1] is preempted by ERISA.

The district court was thus required to construe section 514(a) of ERISA, 29 U.S.C. § 1144(a) (1988), which provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."[2] The court concluded that although section 31-284b

related to employee benefit plans of the Employers described in 29 U.S.C. § 1003(a) (1988), those plans were exempt under 29 U.S.C. § 1003(b) (3) (1988), which exempts (*inter alia*) plans "maintained solely for the purpose of complying with applicable workmen's compensation laws." The district court accordingly granted summary judgment to defendants-appellees.

We affirm.

Background

Section 31-284b was enacted in response to *Stone & Webster Eng'g Corp v. Ilsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983), which declared Conn. Gen. Stat. § 31-51h[3], a predecessor of section 31-284b, preempted by ERISA. In *Stone*, we concluded that former section 31-51h related to plans described in section 1003(a) that were not exempt under section 1003(b). On the latter point, we concluded that the "broadly designed" employer plans at issue were not "maintained solely" to comply with applicable workmen's compensation laws within the meaning of section 1003(b)(3). *Stone*, 690 F.2d at 330.

The Connecticut legislature subsequently replaced section 31-51h with section 31-284b in an effort to take advantage of the section 1003(b)(3) exception. Unlike former section 31-51h, section 31-284b is included in the workers' compensation chapter of the Connecticut General Statutes. More significantly, as will become apparent, subsection (b) of section 31-284b authorizes alternative methods of compliance with the continuation of benefits mandated by subsection (a): (1) insuring the liability, (2) creating a new "injured employee's plan" as an extension of an existing plan, (3) self insurance, or (4) any combination of the above methods. In addition, subsection (c) thereof allows an employer, in the case of an employee welfare fund, to make appropriate payments to the fund to continue the required benefits.

The actions brought by Donnelley and O & G test the design of the new statute. The events which led to this litigation are described below.

A. Donnelley.

Donnelley, a Delaware Corporation with its principal place of business in Chicago, Illinois, conducts business in Connecticut at its Old Saybrook Manufacturing Division in Old Saybrook, Connecticut. Donnelley provides group term life insurance and health and dental benefits to eligible employees and their dependents through employee welfare benefit plans within the meaning of 29 U.S.C. § 1002(1) (1988).

Donnelley's employment policies provide, in relevant part, that:

> An employee having a continuous absence due to illness, injury or plant accident will be retained in an active status for two years or a period equivalent to the employee's total length of service from the last date hired to the first day of absence, whichever is less.
>
> If an employee returns to work and sustains a recurring absence, the recurring absence will be added to the prior absence without credit for the interim return to work for the purpose of [the above paragraph], unless the employee performed in a full time assigned position for ninety consecutive calendar days or the recurring absence was due to an unrelated disability.

Upon the termination of their active status, separated employees may, under certain conditions, convert or extend their life, health or dental coverage at their own expense.

Defendant Judy Prevost, a Connecticut resident, began working for Donnelley in May 1983. At some time thereafter, Prevost suffered work-related injuries which resulted in her absence from work from May 1, 1986 to May 25, 1988, except for a brief period in February 1987 when she returned to work. Throughout this period and thereafter, Prevost was receiving or was eligible to receive workers' compensation payments from Donnelley pursuant to Connecticut law.

Until May 25, 1988, Donnelley maintained Prevost in active status, in accordance with the policies quoted hereinabove, and continued to provide her with life insurance and health and dental benefits. By letter dated May 2, 1988, however, Donnelley advised Prevost that her active status with Donnelley would be terminated on May 25, 1988 if she did not return to work prior to that date. That same letter advised Prevost that she could convert her life insurance coverage to an individual policy at her own expense. She was subsequently advised of her right to continue health and dental insurance at her own expense.

Donnelley terminated Prevost's dental benefits on May 25, 1988, health benefits on June 25, 1988, and life insurance coverage on June 26, 1988. By letter to Donnelley dated May 19, 1988, defendant Gerald Kolinsky, compensation commissioner of the State of Connecticut, advised Donnelley that section 31-284b "requires an employer to continue to provide to an injured employee continuing coverage for group accident and health insurance or life insurance coverage while the employee is eligible to receive or is receiving workers' compensation payments."

Donnelley then filed suit in the United States District Court for the District of Connecticut, seeking injunctive relief and a declaration that section 31-284b is preempted by section 514(a) of ERISA, 29 U.S.C. § 1144(a) (1988). The case was later consolidated with a similar action brought by O & G, described below.

B. O & G.

O & G is a Connecticut corporation with its principal place of business in Torrington, Connecticut. O & G is engaged in the construction business in Connecticut and other states, and is a member of the Associated General Contractors of Connecticut, Inc. (the "AGC"). The AGC negotiates on behalf of its members a collective bargaining agreement (the "Agreement") with the Connecticut Laborers District Council (the "Laborers").

As required by the Agreement, O & G contributed a predetermined amount of money for each hour worked by its employees to, *inter alia*, the Connecticut Laborers Health Fund (the "Health Fund"), an employee welfare benefit plan within the meaning of 29 U.S.C. § 1002(1) (1988) that provides covered employees with medical, life, accidental death and dismemberment, and disability benefits.

Defendant Sharon Ferrillo Petrushonis was first employed by O & G on September 26, 1983. On December 20, 1984, she was injured in the course of her employment with O & G. Defendant Gregory Gorman was first employed by O & G on September 17, 1986. He was injured in the course of that employment on October 14, 1986. Both injured employees were eligible for workers' compensation.

O & G did not make payments to the Health Fund on behalf of Petrushoni and Gorman while they were receiving workers' compensation, since this was not required by the Agreement or the trust agreement establishing the Health Fund. On March 16, 1988, however, defendant Kolinsky ordered O & G to comply with section 31-284b with respect to Petrushonis. Gorman sought a similar determination. His application was pending before the Connecticut authorities when the record for this appeal was closed.

On July 1, 1988, O & G filed suit in the United States District Court for the District of Connecticut seeking injunctive relief

and a declaration that section 31-284b is preempted by section 514(a) of ERISA, 29 U.S.C. § 1144(a) (1988). After the Donnelley and O & G actions were consolidated, all parties filed cross-motions for summary judgment.

On April 12, 1989, the district court rendered summary judgment for the defendants, ruling that Section 31-284b relates to employee benefit plans that are described in 29 U.S.C. § 1003(a) (1988) but are exempted from preemption by section 1003(b)(3).

This appeal followed.

Discussion

This issues here, as in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), a case upon which we ultimately rely for our decision herein, "are whether [section 31-284b] 'relates[s] to' employee benefit plans within the meaning of § 514(a), . . . and, if so, whether any exception in ERISA saves [section 31-284b] from pre-emption." *Id.* at 96.

A. Relationship to Employee Benefit Plans.

Courts have recognized that section 514(a) of ERISA has "designed to have a sweeping preemptive effect in the employee benefit plan field." *American Progressive Life and Health Ins. Co. v. Corcoran*, 715 F.2d 784, 786 (2d Cir. 1983); *see Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1215 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981). "[T]he express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, , 107 S. Ct. 1549, 1552 (1987) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). Accordingly, section 514 was "intended to preempt all state laws that *relate* to employee benefit plans and not just state laws which purport to regulate an area expressly covered by ERISA." *Wadsworth v. Whaland*, 562 F.2d 70, 77 (1st Cir.

1977), *cert. denied*, 435 U.S. 980 (1978); *see Landro v. Glendenning Motorways, Inc.*, 625 F.2d 1344, 1351 (8th Cir. 1980).

"The Court has also recognized, however, that Congress, in seeking to preempt all state laws that 'relate to' employee benefit plans, could not possibly have meant to preempt all laws having any impact on such plans, no matter how small or how tangential." *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 145 (2d Cir.), *cert. denied*, 110 S. Ct. 57 (1989). Indeed, "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw*, 463 U.S. at 100 n. 21.

Applying these principles here, we have little difficulty in concluding that section 31-284b "relate[s] to" employee benefit plans within the meaning of 29 U.S.C. § 1144(a) (1988). Indeed, this conclusion is virtually compelled by our ruling in *Stone* regarding the predecessor provision, former section 31-51h. We said in *Stone*:

> We conclude . . . that section 31-51h of the General Statutes of Connecticut constitutes a forbidden state encroachment on a private employee benefit plan. Its only purpose is to add an additional statutory requirement --the cost of which is to be borne by the employer -- to a private employee benefit plan. Thus, the state statute relates to an employee benefit plan as defined by ERISA and must be construed as preempted by 29 U.S.C. § 1144(a).

690 F.2d at 329.

It is clear that section 31-284b has precisely the same impact upon private employee benefit plans that we discerned former section 31-51h to have in *Stone*. The question remains, however, whether section 31-284b is saved from preemption by 29 U.S.C. § 1003(b)(3) (1988). We now address that issue.

B. The Section 1003(b)(3) Exemption.

In *Stone*, as here, the State of Connecticut contended that section 1003(b)(3) precluded preemption. We rejected that contention, stating:

> Excepted from ERISA coverage are plans "maintained *solely* for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws," 29 U.S.C. § 1003(b)(3) (1976)(emphasis supplied). Of course, the plan in this case, similar to the one in , is one broadly designed to serve employees' needs and resulted from collective bargaining and cannot be said to be maintained "solely" for the purpose of complying with Connecticut's laws. *See Delta Air Lines, Inc. v. Kramarsky*, 650 F.2d 1287, 1306 (2d Cir. 1981).

Stone, 690 F.2d at 330.

In *Alessi*, the Supreme Court concluded that section 514(a) of ERISA preempted a provision of New Jersey law that disallowed the reduction of pension benefits by workmens' compensation payments. The court reasoned that the statute "relate[d] to" pension plans governed by ERISA "because it eliminates one method for calculating pension benefits -- integration -- that is permitted by federal law." 451 U.S. at 524. More to the present point, the Court also briefly considered in *Alessi* the question of section 1003(b)(3) exemption, rejecting a claim by the plaintiffs-retirees that this exemption should be applied "generally to plans governed by state workers' compensation laws." 451 U.S. at 523 n.20. In doing so, the Court said:

> The only relevant state laws, or portions thereof, that survive this preemption provision are those relating to plans that are themselves exempted from

> ERISA's scope. And the relevant exemption from ERISA's coverage--for plans maintained *solely* for compliance with state workers' compensation laws--has no bearing on the plans involved here, which more broadly serve employee needs as a result of collective bargaining. As retirees do not, and cannot, claim that the plans involved here are free from ERISA's coverage, they cannot claim the exception to preemption restricted to laws governing such exempted plans.

Id.

In ruling the section 1003(b)(3) exemption inapplicable, *Stone* also relied upon *Delta Air Lines v. Kramarsky*, 650 F.2d 1287, 1306 (2d Cir.), *modified*, 666 F.2d 21 (2d Cir. 1981), *aff'd in part, vacated in part sub nom. Shaw v. Delta Air Lines*, 463 U.S. 85 (1983), *on remand*, 725 F.2d 146 (2d Cir. 1983). *Kramarsky*, like *Alessi*, concluded that section 1003(b)(3) is inapplicable to "voluntary programs [that] are typically part of a complex benefits scheme established through collective bargaining." *Kramarsky*, 650 F.2d at 1306.

Later developments in the *Kramarsky* litigation, occurring subsequent to our decision in *Stone*, bear critically upon the preemption issue in the instant case. The issue in *Kramarsky* was whether ERISA preempted two New York statutes: N.Y. Exec. Law § 296 (McKinney 1972 & Supp. 1980-81), a provision of the state's Human Rights Law, and N.Y. Work. Comp. Law § 205(3) (McKinney Supp. 1980-81), a provision of the state's Disability Benefits Law ("DBL") that required employers to provide at least eight weeks of coverage for pregnancy-related disability. Only the consideration of the DBL provision in the *Kramarsky* litigation is pertinent to the exemption issue in the instant case.[4]

As stated above, we rejected the state's contention in *Kramarsky* that the DBL provision was saved from preemption by

section 1003(b)(3). *See* 650 F.2d at 1303-07. On review, the Supreme Court agreed that section 1003(b)(3) generally does not exempt disability benefit provisions that are included in broader plans, stating:

> §[1003](b)(3) excludes "plans," not portions of plans, from ERISA coverage; those portions of the [employers'] multibenefit plans maintained to comply with the Disability Benefits Law, therefore, are not exempt from ERISA and are not subject to state regulation. There is no reason to believe that Congress used the word "plan" in § [1003](b) to refer to individual benefits offered by an employee benefit plan. To the contrary, §[1003](b)(3)'s use of the word "solely" demonstrates that the purpose of the entire plan must be to comply with an applicable disability insurance law.

Shaw, 463 U.S. at 107.

Significantly, however, the Court added the following caveat:

> This is not to say, however, that the [employers] are completely free to circumvent the Disability Benefits Law by adopting plans that combine disability benefits inferior to those required by that law with other types of benefits. Congress surely did not intend, at the same time it preserved the role of state disability laws, to make enforcement of those laws impossible. A state may require an employer to maintain a disability plan complying with state law as a *separate administrative unit.* Such a plan would be exempt under § [1003](b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a multibenefit ERISA plan, see

> N.Y. Work. Comp. Law App. § 335.6 (McKinney Supp. 1982-1983), does not make the state law wholly unenforceable as to employers who choose that option.
>
> In other words, while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan. If the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply. The Court of Appeals erred, therefore, in holding that appellants are not at all free to enforce the Disability Benefits Law against those appellees that provide disability benefits as part of multibenefit plans.

Shaw, 463 U.S. at 108 (emphasis added).

In keeping with, and in apparent reliance upon, the above language in *Shaw*, the State of Connecticut allows an employer, under the second option in section 31-284b(b), to "creat[e] an injured employee's plan as an extension of any existing plan for working employees." Such a plan would constitute a "separate administrative unit" within the meaning of *Shaw*, designed "solely for the purpose of complying with [the] applicable workmen's compensation law[]" within the meaning of section 1003(b)(3).

Nor is Connecticut's position weakened by the other alternatives provided by section 31-284b(b) and (c). *Shaw* allows a state to "force [an] employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan." *Shaw*, 463 U.S. at 108. Even assuming, therefore, that the alternatives to a separate plan provided in section 31-284b(b) and (c) can be deemed to fall within

the confines of an employer's existing ERISA plan, the Connecticut provision would fall within the parameters of the *Shaw* ruling. A *fortiori*, if *Shaw* allows a state to authorize alternatives to a separate plan *within* an ERISA plan without losing the benefit of the section 1003(b)(3) exemption, it may surely authorize such alternatives *outside* the confines of an ERISA plan without doing so.

Accordingly, we agree with the district court that section 31-284b is not preempted by virtue of 29 U.S.C. § 1144 (1988) because it falls within the exception to preemption provided by 29 U.S.C. § 1003(b)(3)(1988).

Conclusion

The judgment of the district court is affirmed.

FOOTNOTES

1. Conn. Gen. Stat. § 31-284b (1989) provides:

> Sec. 31-284b. *Employer to continue insurance coverage or welfare fund payments for employees eligible to receive workers' compensation. Use of second injury fund.* (a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare fund, as defined in section 31-53, shall provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury.
>
> (b) An employer may provide such equivalent accident and health or life insurance coverage or welfare fund payments or contributions by: (1) Insuring his full liability under this act in such stock or mutual companies or associations as are or may be authorized to take such risks in this state; (2) creating an injured employee's plan as an extension of any existing plan for working employees; (3) self-insurance; or (4) by such combination of the above-mentioned methods as he may choose.

c) In the case of an employee welfare fund, an employer may provide such equivalent protection by making payments or contributions for such hours of contributions established by the trustees of the employee welfare fund as necessary to maintain continuation of such insurance coverage when such amount is less than the amount of regular hourly or weekly contributions for full-time employees.

(d) In any case where workers' compensation payments to an individual for total incapacity under the provisions of section 31-307 continue for more than one hundred four weeks, the cost of such accident and health insurance or life insurance coverage after the one hundred fourth week shall be paid out of the second injury fund in accordance with the provisions of section 31-349.

(e) Such accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: Medical, surgical, dental, nursing and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care.

2. 29 U.S.C. § 1003 (1988) provides in pertinent part:

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter [consisting of sections 1001-1168] shall apply to any employee benefit plan if it is established or maintained--

(1) by any employer engaged in commerce or in any industry or activity affecting commerce. . . .

> (b) The provisions of this subchapter shall not apply to any employee benefit plan if-- . . .
>
> (3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws.

3. Former section 31-51h provided in pertinent part:

> No employer, private, municipal or state, shall cancel or withhold accident and health insurance or life insurance coverage of any employee or his dependents or cease to make payments or contributions at the regular hourly or weekly rate for full-time employees for each week of disability to an employee's welfare fund as defined in subsection (h) of section 31-53 while the employee is eligible to receive or is receiving workers' compensation payments pursuant to chapter 568 or is receiving a continuation of salary or wages under a provision for sick leave payments for time lost for on the job injury. Such accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: Medical, surgical, dental, nursing, and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care.

4. The precedential value of the *Kramarsky* litigation for this case is not lessened by the fact that *Kramarsky* dealt with disability insurance laws, while we address workers' compensation laws herein. The section 1003(b)(3) exemption applies equivalently to both. *See Kramarsky*, 650 F.2d at 1305-06 & n.27.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

R.R. DONNELLEY & SONS CO.	:	
-vs-	:	Civil No. H-88-389 (PCD) MJQC
JUDY PREVOST, et al.	:	

O & G INDUSTRIES, INC.	:	
-vs-	:	Civil No. H-88-448 (PCD)
JOHN ARCUDI, et al.	:	

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The motions in both cases question whether the Employee Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. § 1000, *et seq.*, preempts Conn. Gen. Stat. § 31-284b, which requires employers to continue insurance coverage or welfare fund payments while the employee is eligible to receive or is receiving workers' compensation.

Facts

A. R.R. Donnelley & Sons, Co.

R.R. Donnelley is a Delaware corporation with a place of business in Old Saybrook. Donnelley maintains life insurance and health and dental benefits for its employees through employee welfare benefit plans which are regulated by ERISA. Defendant Judy Prevost began working for Donnelley in May 1983. While so employed, Prevost suffered work-related injuries that necessitated her absence from work from May 1, 1986 to May 25, 1988, except from February 9, 1987 to February 27, 1987, when she temporarily returned to work. Prevost was eligible to receive, and has received, workers' compensation payments since December 5, 1985. In accordance with its employment policies and its employee welfare benefit plans, Donnelley maintained Prevost in active employee status and continued her dental benefits until May 25, 1988, health benefits until June 25, 1988, and life insurance until June 26, 1988. Donnelley then informed Prevost of her right to convert her life insurance to an individual policy and to continue health and dental benefit coverage, at her own expense, under the health plan, as required by ERISA.

By letter dated May 19, 1988, a state compensation commissioner advised Donnelley that it was obligated under Conn. Gen. Stat. § 31-284b to continue paying for Prevost's health and life benefits as long as she remained eligible to receive workers' compensation benefits. Believing the state intended to enforce the provisions of § 31-284b and order continuation of Prevost's benefits, Donnelley brought this action seeking declaratory and injunctive relief.

B. O & G Industries, Inc.

O & G maintains, as a result of collective bargaining, ERISA-regulated employee fringe benefit funds. Defendants Sharon Petrushonis and Gregory Gorman received work-related injuries while O & G employees on December 20, 1984, and October 14,

1986, respectively. Both injuries entitled them to receive workers' compensation benefits. However, when Petrushonis and Gorman ceased active employment, O & G ceased contributing to the fringe benefit funds on their behalf in accordance with the terms of its collective bargaining agreement.

Petrushonis was covered under the health fund and her eligibility for benefits continued for two years after her disabling injury, until January 1987. She was provided reduced medical insurance coverage, through the health fund, until January 1988, at no cost to her. Gorman was not eligible and did not receive any continued coverage from the health fund.

Petrushonis obtained, from the state workers' compensation commission, an order requiring O & G to continue their health care benefits pursuant to Conn. Gen. Stat. § 31-284b. Gorman's request for such an order was pending as of the filing of the instant motion. O & G brought its action seeking a judgment declaring that conn. Gen. Stat. § 31-284b is preempted by ERISA and an order enjoining defendants from enforcing § 31-284b.

Discussion

A. Background

The statute at issue in this case, Conn. Gen. Stat. § 31-284b, was enacted in response to the opinion of the district court in *Stone & Webster Engineering Corp. v. Ilsley*, 518 F. Supp. 1297 (D. Conn. 1981), *aff'd*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983). In *Stone & Webster*, ERISA was held to have preempted Conn. Gen. Stat. § 31-51h, a predecessor of § 31-284b, that prohibited employers from canceling welfare benefits or ceasing to make contributions to an employee's welfare fund while the employee was eligible to receive workers' compensation benefits. The first issue in *Stone & Webster* was whether § 31-51h "relate[d] to" an employee benefit plan regulated by ERISA. Section 514(a) of

ERISA, 29 U.S.C. § 1144(a), provides that applicable provisions of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." The preemption provision of ERISA was enacted to "eliminate [ ] the threat of conflicting or inconsistent state and local regulation of employee benefit plans." *Stone & Webster*, 690 F.2d at 329. Section 31-51h was construed to require "an employer to make a contribution to the Fund for a former employee — as such, a pension benefit — which was not bargained for or agreed to in the contract between the employer and the union." *Id.* In finding § 31-51h to be a forbidden state encroachment on a private employee benefit plan, the court stated:

> Its only purpose is to add an additional statutory requirement — the cost of which is to be borne by the employer — to a private employee benefit plan. Thus, the state statute relates to an employee benefit plan as defined by ERISA and must be construed as preempted by 29 U.S.C. § 1144(a).

Id. at 329.

The state argued that § 31-51h was established solely to comply with the workers' compensation law and thus exempt from preemption under Section 4(b) of ERISA, 29 U.S.C. § 1003(b). That section excepts from ERISA preemption, plans "maintained solely for the purpose of complying with applicable workmen's compensation laws." The plan involved was "broadly designed to service employees' needs and [could not] be said to be maintained 'solely' for the purpose of complying with Connecticut's laws." *Stone & Webster*, 690 F.2d at 330.

B. Conn. Gen. Stat. § 31-284b

Plaintiffs argue that § 31-284b differs insignificantly from § 31-51h, and thus is also preempted by ERISA. Defendants contend

that § 31-284b differs substantively and, as revised, is not preempted by ERISA.

Section 31-51h provided that "[n]o employer . . . shall cancel or withhold accident and health insurance or life insurance coverage of any employee or his dependents or cease to make payments or contributions at the regular hourly or weekly rate for full-time employees for each week of disability to an employee's welfare fund" while the employee was eligible to receive or was receiving workers' compensation payments. Thus, an employer could only comply with § 31-51h by continuing the welfare fund payments, and thus the employee's benefit eligibility, under its existing ERISA plan.

While § 31-284b also implements a state policy of maintaining the income and benefits of employees who suffer employment-related injuries, it differs from § 31-51h in regard to employer compliance. Section 31-284b requires "any employer . . . who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions . . . to an employee welfare fund . . . [to] provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments." Section 31-284b provides the employer with five options by which to provide equivalent benefits. First, employers can insure their liability under the section. Conn. Gen. Stat. § 31-284b(b). Second, employers can "creat[e] an injured employee's plan as an extension of any existing plan for working employees." *Id.* Third, employers can self-insure the equivalent coverage. *Id.* Fourth, employers can employ any combination of the above methods. *Id.* Finally, in the case of an employee welfare fund, an employer may provide equivalent coverage by making payments or contributions established by the trustees of such fund as necessary to maintain continued coverage. Conn. Gen. Stat. § 31-284b(c).

C. Preemption

Whether a federal law preempts a state statute, requires inquiry into Congress' intent in enacting the federal statute. Preemption may either be expressed in the statute's language or implied from its structure and purpose. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1982). Section 514(a) of ERISA, 29 U.S.C. § 1144(a), provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b)." Because ERISA was enacted "to occupy fully the field of employee benefit plans and to establish it 'as exclusively a federal concern,'" *Gilbert v. Burlington Indus.*, 765 F.2d 320, 326 (2d Cir. 1985), *aff'd*, 477 U.S. 901 (1986), quoting *Alessi v. Raybestos-Manhattan*, 451 U.S. 504, 523 (1981), the Supreme Court has interpreted the language "relate to" broadly to encompass any state law that has a "connection with or reference to" employee benefit plan. *Shaw*, 463 U.S. at 96-97. Broad interpretation is consistent with ERISA's objective of creating uniformity in the laws and regulations applicable to employee benefit plans. The Court in *Shaw* rejected the argument that state regulatory statutes were preempted only when they attempt to regulate an area expressly covered by ERISA, such as reporting, disclosure and fiduciary responsibility. *Id.* at 98; *see also Gilbert*, 765 F.2d at 327. "Thus ERISA preempts all state laws insofar as they apply to employee benefit plans even if those laws do not expressly concern employee benefit plans and amount only to indirect regulation of such plans." *Howard v. Parisian, Inc.*, 807 F.2d 1560, 1563 (11th Cir. 1987). Section 514(a) "has been called 'the most sweeping federal preemption statute ever enacted by Congress.'" *Holland v. Burlington Indus.*, 772 F.2d 1140, 1146 (4th Cir. 1985), *cert. denied*, 477 U.S. 903 (1986), quoting *California Hosp. Ass'n v. Henning*, 569 F. Supp. 1544, 1546 (C.D. Cal. 1983). It was intended to displace all state laws within its sphere, including state laws consistent with ERISA's substantive requirements. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985).

Given the expansive interpretation of ERISA's preemption provision, § 31-284b is found to "relate[ ] to" employee benefit plans and is thus within the sphere of 29 U.S.C. § 1144(a). Defendants argue that the relationship between § 31-284b and an employee benefit plan is too remote to justify preemption, since the statute does not affect the structure, administration, or type of benefits provided. *See Rebaldo v. Cuomo*, 749 F.2d 133, 138-39 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985) (mere fact that a state statute has some economic impact on an employee benefit plan does not mean that the statute is preempted). Defendants also note that the broad reading of ERISA's preemption provision in *Shaw* was qualified in that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." 463 U.S. at 100 n.21.

As a state statute "which requires employers to pay employees specific benefits, [Conn. Gen. Stat. § 31-284b] clearly 'relate[s] to' benefit plans." *Shaw*, 463 U.S. at 97. Section 31-284b requires employers, who provide insurance coverage or welfare fund payments for employees, to provide equivalent coverage while the employee is eligible to receive or is receiving workers' compensation benefits. An employer can fulfill its obligations under § 31-284b by "creating an injured employee's plan" to provide such equivalent benefits. Thus, § 31-284b would relate to any plans that are created to comply with its terms. In "the case of an employee welfare fund, an employer may provide such equivalent protection by making payments or contributions for such hours of contributions established by the trustees of the employee welfare fund as necessary to maintain continuation of such insurance coverage when such amount is less than the amount of regular hourly or weekly contributions for full-time employees." Conn. Gen. Stat. § 31-284b(c). Trustees of such employee welfare funds are not compelled to provide continuation benefits. Rather, an employer is permitted to satisfy its obligations under the statute by making payments to an employee welfare fund, where the terms and conditions of the fund as established by its trustees permit such

continued coverage. While this provision does not affect the terms of an existing plan, it does relate to such plans to the extent it permits an employer to satisfy its state law obligations by making payments to an ERISA-regulated benefit plan. In all of the permitted manners of complying, § 31-284b requires continuation of benefits provided to employees in plans subject to ERISA. Accordingly, § 31-284b "relates to" employee benefit plans covered by ERISA and is preempted by 29 U.S.C. § 1144(a).

As thus preempted, the issue becomes whether any of the exceptions to 29 U.S.C. § 1144(a) excepts § 31-284b from preemption. Section 514(a) of ERISA, 29 U.S.C. § 1144(a), excepts from preemption those state laws that "relate to" benefit plans that are themselves exempted from ERISA. ERISA exempts employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation law or unemployment compensation or disability insurance laws."[1] To come within this exemption, the employer's entire plan must have been intended to comply with a workers' compensation statute. Plans that "more broadly serve employee needs as a result of collective bargaining," but also provide the benefits required by a workers' compensation, unemployment compensation, or disability insurance laws, are not exempt under this provision. *Alessi*, 451 U.S. at 523 n.20. To hold otherwise would subject employee

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[1] Section 31-284b is clearly a workers' compensation law within the meaning of ERISA. Connecticut Workers' Compensation Act defines "income" as "all forms of [remuneration] to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare plan contributions." Conn. Gen. Stat. § 31-275(14). Section 31-284b(a) provides that employers shall continue equivalent benefits to injured employees "[i]n order to maintain, as nearly as possible, the income" of such employees. Thus, the statute does not intrude upon the initial decision to provide such benefits but rather requires the continuation of benefits equivalent to those provided incident to employment, as a form of compensation to employees who suffer employment related injuries. It would preserve the level of compensation of an employee injured in his employment during the period of compensated disability.

benefit plans to multiple regulatory schemes, i.e., "one portion of a multi-benefit plan would be subject only to state regulation, while other portions would be exclusively within the federal domain." *Shaw*, 463 U.S. at 107. Such a result would be contrary to the purposes of ERISA. Thus, "[o]nly separately administered disability plans maintained solely to comply with [the state statute at issue] are exempt from ERISA coverage." *Id.* at 108.

Section 31-284b obliges an employer to provide the state mandated equivalent benefits in any one of five methods, one of which is an injured employee's plan which provides such benefits. Another is to insure the statutory liability. The statute also allows compliance by contributions to an employee welfare fund as established by its trustees. Such a scheme of employer compliance was expressly endorsed by the Supreme Court in *Shaw*.

In *Shaw*, 463 U.S. at 106-08, a New York Disability Benefits Law which required employers to pay certain benefits to employees unable to work because of pregnancy or other non-occupational injuries or illness, though related to employee benefit plans, was found to be exempt from preemption under Section 4(b)(3). Only plans maintained solely to comply with the statute at issue were exempt from ERISA coverage. The Court, however, reasoned that an employer should not be

> completely free to circumvent the Disability Benefits Law by adopting plans that combine disability benefits inferior to those required by that law with other types of benefits. Congress surely did not intend, at the same time it preserved the role of state disability laws, to make enforcement of those laws impossible. A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit. Such a plan would be exempt under § 4(b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a

> multibenefit ERISA plan, . . . does not make the state law wholly unenforceable as to employers who choose that option.

Shaw, 463 U.S. at 108 (citation omitted). Thus, "while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan." *Id.* Accordingly, the state was free to enforce its Disability Benefits Law against those employers that chose to provide the mandated disability benefits as part of multibenefit plans. *Id.*

Section 31-284b does no more than the statute found to be exempt from preemption in *Shaw*. Section 31-284b merely requires continuation of certain benefits and an employer may choose between providing such benefits through insurance or a separately administered plan or by continuing to make payments to an employee welfare fund when such funds allow for continued benefits. Accordingly, Conn. Gen. Stat. § 31-284b is exempt from preemption under Section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3).

Summary

Plaintiffs' motion for summary judgment are denied and defendants' cross-motions are granted. Judgment shall enter for defendants accordingly.

SO ORDERED.

Dated at Hartford, Connecticut this 11th day of April, 1989.

/s/
Peter C. Dorsey
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

R.R. DONNELLEY & SONS CO.	:	
-vs-	:	Civil H-88-389 (PCD) MJQC
JUDY PREVOST, et al	:	

O & G INDUSTRIES, INC.	:	
-vs-	:	Civil H-88-488 (PCD)
JOHN ARDUCI, et al	:	

JUDGMENT

This action having come on for consideration of cross-motion for summary judgment before the Honorable Peter C. Dorsey, United States District Judge, and

The Court having considered the full record of the case including applicable principles of law, and the Court having its Ruling on Cross-Motions for Summary Judgment, granting the defendants' motions and denying the plaintiffs' motions,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the defendants.

Dated at Hartford, Connecticut, this 12th day of April 1989.

KEVIN F. ROWE, Clerk

By /s/
Dennis P. Iavarone
Deputy in Charge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Hartford
H-88-389
H-88-448
Dorsey

At a state Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24 day of September one thousand nine hundred and ninety

Present: HON. JON O. NEWMAN

HON. GEORGE C. PRATT

HON. J. DANIEL MAHONEY

Circuit Judges,

R. R. DONNELLEY & SONS CO.,

-v.- Plaintiff-Appellant.

JUDY PREVOST: GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut: John A. Arcudi, Chairman, Board of Compensation Commissioners, State of Connecticut: CLARINE NARDI RIDDLE, Attorney General, State of Connecticut,

O & G Industries, Inc.,

Plaintiff-Appellant,

-v.-

Defendants-Appellees.

United Automobile, Agricultural Implement and Aerospace Workers, AFL-CIO and District 91, International Association of Machinists and Aerospace Workers, AFL-CIO,

Amicus Curiae.

John Arcudi, Edward F. Bradley, Gerald Kolinsky, Gregory Gorman and Sharon Ferrillo Petrushonis,

Defendants-Appellees.

Docket No.
89-7467
89-7481

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjusted and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the opinion of this court to be taxed against the appellant.

Elaine B. Goldsmith,
Clerk

Edward J. Guardaro,
Deputy Clerk

ISSUED AS MANDATE
November 9, 1990

UNITED STATES COURT OF APPEALS
For the
Second Circuit

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 1st day of November, one thousand nine hundred and ninety.

R. R. Donnelley & Sons Co.,
Plaintiff-Appellant

V.

Judy Prevost, Et al.,
Defendants-Appellees

United Automobile, Et al.,
Amicus Curiae

DOCKET NUMBER
89-7467, 89-7481

A Petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by plaintiff-appellant R. R. Donnelley & Sons Co.

Upon consideration by the panel that heard the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

ELAINE B. GOLDSMITH
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

R. R. DONNELLEY & SONS COMPANY, PLAINTIFF	:	
VS.	:	CIVIL ACTION NO. H-88-389(PCD)
JUDY PREVOST; GERALD KOLINSKY, COMPENSATION COMMISSIONER, EIGHTH DISTRICT, STATE OF CONNECTICUT; JOHN A. ARCUDI, CHAIRMAN, BOARD OF COMPENSATION COMMISSIONERS, STATE OF CONNECTICUT; JOSEPH I. LIEBERMAN, ATTORNEY GENERAL, STATE OF CONNECTICUT, DEFENDANTS	:	JULY 11, 1988

STATEMENT OF UNDISPUTED MATERIAL FACTS

In accordance with Local Rule 9(c), the plaintiff, R. R. Donnelley & Sons Company ("Donnelley"), submits the following Statement of Undisputed Material Facts:

1. Donnelley, at its sole expense, provides group term life insurance and health and dental benefits to eligible employees

through employee welfare benefit plans established and maintained by it to provide such benefits to plan participants and their beneficiaries. (The plans providing life insurance and health and dental benefits are hereinafter individually referred to as the "Life Plan," the "Health Plan," and the "Dental Plan," respectively, and are hereinafter collectively referred to as the "Plans.")

2. At all times relevant hereto Donnelley was an employer engaged in commerce or in an industry or activity affecting commerce.

3. Neither the Life Plan, the Health Plan nor the Dental Plan was established or is maintained by Donnelley solely for the purpose of complying with applicable workmen's compensation laws, unemployment compensation laws, or disability insurance laws.

4. The Life Plan provides group term life insurance to eligible employees pursuant to a group insurance policy.

5. The Health Plan provides health benefits to eligible employees out of the assets of a trust which Donnelley funds through its contributions. The Health Plan is administered by Prudential Insurance Company which has also issued a stop-loss insurance policy to the Health Plan. The stop-loss insurance policy would pay benefits pursuant to the Health Plan in any year in which aggregate claims under the Health Plan exceed 1.25 times the expected claims under the Health Plan. The stop-loss insurance policy has never been called upon to pay benefits.

6. The Dental Plan provides dental benefits to eligible employees pursuant to a group dental expense insurance policy issued by Connecticut General Life Insurance Company.

7. The Life Plan provides that upon termination of employment an employee has a right to convert group life insurance coverage to a policy of individual insurance, at the employee's own

expense. (*See* Affidavit of James Roddy ("Roddy Aff."), Exhibit B.)

8. The Health Plan provides that upon termination of employment an employee has certain rights to continue coverage, at the employees's own expense, pursuant to the requirements of Section 600 *et seq.* of the Employee Retirement Income Security Act of 1974 (the "COBRA Provisions"). (*See* Roddy Aff., Exhibit C.)

9. The Dental Plan provides that upon termination of employment an employee has certain rights to continue coverage at the employee's own expense, pursuant to the COBRA Provisions. (*See* Roddy Aff., Exhibit D.)

10. Pursuant to the terms of the Life Plan, an employee's insurance under the Life Plan ceases 31 days after the employee's termination of employment.

11. Pursuant to the terms of the Health Plan, an employee's coverage under the Health Plan ceases 30 days after the employee's termination of employment unless the employee chooses to extend such coverage at the employee's own expense.

12. Pursuant to the terms of the Dental Plan, an employee's coverage under the Dental Plan ceases as of the date of the employee's termination of employment unless the employee chooses to extend such coverage at the employee's own expense.

13. The Plans each contain the following sentence: "Donnelley personnel policies and records determine which employees are eligible for membership under the terms of the plan and the amount of coverage each has." (*See* Roddy Aff., Exhibits B-D.)

14. Donnelley's employment policies provide that "[a]n employee having a continuous absence due to illness, injury, or plant accident will be retained in an active status for two years or a period

equivalent to the employee's total length of service from the last date hired to the first date of absence, whichever is less." (*See* Roddy Aff., Exhibit A.)

15. Eligible employees who were receiving life insurance and health and dental benefits who are absent from work due to illness, injury or plant accident remain eligible for such coverage during the period that they are retained in active status.

16. The date an absent employee ceases to be in active status is the date on which such employee is terminated from employment for purposes of continued eligibility for benefits under the Plans.

17. Defendant Prevost commenced work with Donnelley at its Old Saybrook Manufacturing Division in May of 1983.

18. At some time after May of 1983, while still employed by Donnelley, Defendant Prevost suffered certain work-related injuries.

19. Defendant Prevost has been continuously absent from work since May 1, 1986, except for the period from February 9, 1987 to February 27, 1987 (during which period she temporarily returned to work), due to illness, injury or plant accident.

20. During her absence from work from May 1, 1986 until May 25, 1988, Defendant Prevost was maintained as an employee in active status.

21. Donnelley, at its sole expense, continued to provide life insurance and health and dental benefits to Defendant Prevost in accordance with the terms of its employment policies and the Plans while she was in active status.

22. By letter dated May 2, 1988, Donnelley informed Defendant Prevost that her active status with Donnelley would be terminated as of May 25, 1988 is she did not return to work prior to that date, and she did not return to work prior to that date. *See* Roddy Aff., Exhibit E.

23. By letter dated May 2, 1988, Donnelley informed Defendant Prevost of her right under the Life Plan to convert her life insurance coverage to an individual policy at her own expense. *See* Roddy Aff., Exhibit E.

24. On or about June 24, 1988, Donnelley provided Defendant Prevost with information regarding her right under the Health and Dental Plans to continue her health and dental coverage under the Plans at her own expense. *See* Roddy Aff., Exhibit F.

25. On May 25, 1988 and continuously thereafter, Defendant Prevost was receiving or was eligible to receive workers' compensation payments from Donnelley pursuant to Chapter 568 of the Connecticut General Statutes.

26. Donnelley ceased to provide dental benefits to Defendant Prevost under the Dental Plan after May 25, 1988. Donnelley ceased to provide health benefits to Defendant Prevost under the Health Plan at its own expense after June 25, 1988. Donnelley ceased to provide life insurance to Defendant Prevost under the Life Plan at its own expense after June 26, 1988.

27. Donnelley is a corporation "within the State [of Connecticut] using the services of one or more employees for pay. . ." within the definition of "employer" contained in Section 31-275 of the Connecticut General statutes.

28. By letter to Donnelley dated May 19, 1988, Defendant Kolinsky stated that Section 31-284b of the Connecticut General Statutes "requires an employer to continue to provide to an injured employee continuing coverage for group accident and health

insurance or life insurance coverage while the employee is eligible to receive or is receiving workers' compensation payments." In the same letter, Defendant Kolinsky also directed Donnelley that pursuant to Section 31-284b ". . . Ms. Prevost is eligible for ongoing benefits and if you convert her policy (group life), you may be required to pay the premiums as long as she is receiving compensation benefits. The same would be true of her medical insurance." *See* Roddy Aff., Exhibit G.

29. Upon information and belief, Donnelley believes that Defendants Kolinsky, Arcudi, and Lieberman intend to seek enforcement of the provisions of Section 31-284b of the Connecticut General Statutes against Donnelley and an order compelling Donnelley to provide life insurance, health, and dental benefits to Defendant Prevost at Donnelley' expense for as long as Defendant Prevost is eligible to receive or is receiving workers' compensation payments.

PLAINTIFF
R. R. DONNELLEY & SONS COMPANY

/s/

Thomas Z. Reicher
Felix J. Springer
Daniel L. FitzMaurice
Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing has been mailed this date, postage prepaid, to: Carl Schuman, Esquire, Assistant Attorney General, P. O. Box 120, Hartford, Connecticut 06101; and Ronald T. Murphy, Esquire, 111 Oak Street, Hartford, Connecticut 06106-1562.

/s/
Thomas Z. Reicher

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

R.R. DONNELLEY & SONS CO.	:	CIVIL NO. H-88-389 (PCD)
vs.	:	"ALL CASES"
JUDY PREVOST ET AL.	:	
O&G INDUSTRIES, INC.	:	CIVIL NO. H-88-448 (PCD)
VS.	:	
JOHN ARCUDI, ET AL.	:	OCTOBER 7, 1988

STATE DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

The State defendants concur with the plaintiffs' Statement of Undisputed Facts.

Respectfully submitted.

JOHN A. ARCUDI
Chairman, Workers' Compensation Commission

GERALD KOLINSKY
Compensation Commissioner

EDWARD F. BRADLEY
Compensation Commissioner

JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

DEFENDANTS

By: /s/
Carl J. Schuman
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut 06106
Telephone: 566-4990

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, first class, postage prepaid, this 7th day of October 1988 to Lindalea P. Ludwick, Esq., Kslarz and Early, P.C., 3 Trumbull Street, New Haven, Connecticut 06508; Richard S. Aries, Esq., Ashcraft & Gerel, Suite 1202, 60 Washington Street, Hartford, Connecticut 06106; Ronald T. Murphy, Esq., 111 Oak Street, Hartford, Connecticut 06106-1562; Felix J. Springer, Esq., Day, Berry & Howard, CityPlace, Hartford, Connecticut 06103; Thomas M. Cloherty and Thomas J. Joyce, Murtha, Cullina, Richter & Pinney, CityPlace, P.O. Box 3197, Hartford, Connecticut 06103.

/s/
Carl J. Schuman
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

R.R. DONNELLEY & SONS CO.	:	CIVIL NO. H-88-389 (PCD)
VS.	:	
JUDY PREVOST ET AL.	:	OCTOBER 7, 1988

DEFENDANT PREVOST'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant Prevost concurs with the plaintiffs' Statements of Undisputed Material Facts.

Respectfully submitted.

JUDY PREVOST
DEFENDANT

By: /s/
Ronald T. Murphy, Esq.
111 Oak Street
Hartford, Connecticut 06106-1562

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, first class, postage prepaid, this 7th day of October 1988 to Lindalea P. Ludwick, Esq., Sklarz and Early, P.C., 3 Trumbull Street, New Haven, Connecticut 06508; Richard S. Aries, Esq., Ashcraft & Gerel, Suite 1202, 60 Washington Street, Hartford, Connecticut 06106; Felix J. Springer, Esq., Day, Berry & Howard, CityPlace, Hartford, Connecticut 06103; Thomas M. Cloherty and Thomas J. Joyce, Murtha, Cullina, Richter & Pinney, CityPlace, P.O. Box 3197, Hartford, Connecticut 06103 and Carl J. Schuman, Assistant Attorney General, 30 Trinity Street, Hartford, Connecticut 06106.

/s/
Ronald T. Murphy, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

R.R. DONNELLEY & SONS COMPANY,	:	
PLAINTIFF	:	
VS.	:	
JUDY PREVOST; GERALD KOLINSKY, COMPENSATION COMMISSIONER, EIGHTH DISTRICT, STATE OF CONNECTICUT; JOHN A. ARCUDI, CHAIRMAN, BOARD OF COMPENSATION COMMISSIONERS, STATE OF CONNECTICUT; JOSEPH I. LIEBERMAN, ATTORNEY GENERAL, STATE OF CONNECTICUT	:	CIVIL ACTION NO. H-88-389 (PCD)
DEFENDANTS	:	JUNE 8, 1988

COMPLAINT

I. PRELIMINARY STATEMENT

This is an action wherein the Plaintiff, R.R. Donnelley & Sons Company ("Donnelley"), seeks a declaratory judgement that Section 31-284b of the Connecticut General Statutes ("C.G.S."), which purports to require employers to continue to provide life and

health insurance coverage to an employee who is receiving workers' compensation payments, is preempted by the Employee Retirement Income Security Act of 1974 ("ERISA").

II. THE PARTIES

1. Plaintiff Donnelley is a Delaware corporation with a principal place of business in Chicago, Illinois. Donnelley is authorized to conduct business in Connecticut, which it does at its Old Saybrook Manufacturing Division in Old Saybrook, Connecticut.

2. Defendant Judy Prevost is a Connecticut resident who formerly worked at Donnelley's Old Saybrook Manufacturing Division.

3. Defendant Gerald Kolinsky is the Compensation Commissioner, Eighth District, State of Connecticut.

4. Defendant John A. Arcudi is the Chairman, Board of Compensation Commissioners, State of Connecticut.

5. Defendant Joseph I. Lieberman, is the Attorney General of the State of Connecticut.

6. Under C.G.S. Section 31-278, Defendants Kolinsky, Arcudi and Lieberman are authorized to seek enforcement of any provision of C.G.S. Chapter 568 or any proper order of a Compensation Commissioner or the Compensation Commission rendered pursuant to any such provision.

III. JURISDICTION

7. This is an action seeking a declaratory judgment pursuant to 28 U.S.C. Section 2201 and permanent injunctive relief.

Jurisdiction exists pursuant to 28 U.S.C. Section 1331 and 29 U.S.C. Section 1132(e)(1).

IV. THE CONTROVERSY

8. Donnelley, at its own expense, provides group term life insurance and health and dental benefits to eligible employees and their dependents through employee welfare benefit plans within the meaning of Section 3(1) of ERISA, 29 U.S.C. Section 1002(1) ("the Plans"), which Plans are subject to Title I of ERISA pursuant to Section 4(a) of ERISA, 29 U.S.C. Section 1003(a).

9. Pursuant to Donnelley's employment policies, employees absent from work due to illness, injury or plant accident may remain in active status and thus remain eligible for benefits under the Plans for up to two years from the first date of their absence. Donnelley's employment policies provide, in relevant part, that:

> An employee having a continuous absence due to illness, injury or plant accident will be retained in an active status for two years or a period equivalent to the employee's total length of service from the last date hired to the first day of absence, whichever is less.
>
> If an employee returns to work and sustains a recurring absence, the recurring absence will be added to the prior absence without credit for the interim return to work for the purpose of [the above paragraph], unless the employee performed in a full time assigned position for ninety consecutive calendar days or the recurring absence was due to an unrelated disability.

10. Upon the termination of their active status, separated employees may, under certain conditions set forth in the Plans, convert or extend their life, health and dental coverage at their own expense.

11. Defendant Prevost commenced work with Donnelley in May of 1983. Thereafter, while still employed by Donnelley, Defendant Prevost allegedly suffered certain work-related injuries. Defendant Prevost has been continuously absent from work since May 1, 1986, except for the period from February 9, 1987 to February 27, 1987.

12. In accordance with the Plans and its employment policies, Donnelley has continued to provide life insurance and health and dental benefits to Defendant Prevost during her period of active status while absent from work.

13. On or about May 2, 1988, Donnelley informed Defendant Prevost that her active status with Donnelley would be terminated as of May 25, 1988. Such termination of active status would, following 31 days after termination, result in Donnelley ceasing to pay for her benefits under the Plans. Accordingly, Donnelley also informed Defendant Prevost of her right to convert her life insurance to individual policy coverage and that she would automatically receive from Donnelley information regarding her rights to continue health and dental benefits coverage at her own expense under ERISA (as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986, commonly referred to as "COBRA").

14. Neither the terms of the Plans nor the provisions of ERISA require Donnelley to provide coverage to Defendant Prevost beyond 31 days after termination of her active status unless she decides to continue such coverage at her own expense in accordance with the terms of the Plans.

15. On and after December 5, 1985, but with the exception of the period from February 9, 1987 to February 27, 1987, Defendant Prevost has remained eligible to receive and has received workers' compensation payments pursuant to C.G.S. Chapter 568.

16. C.G.S. Section 31-284b(a) provides, in pertinent part, as follows:

> [A]ny employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee . . . shall provide to such employee equivalent insurance coverage . . . while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter . . . .

17. Donnelley is an "employer" within the meaning of C.G.S. Section 31-275.

18. By letter to Donnelley dated May 19, 1988, Defendant Kolinsky stated that C.G.S. Section 31-284b "requires an employer to continue to provide to an injured employee continuing coverage for group accident and health insurance or life insurance coverage while the employee is eligible to receive or is receiving workers' compensation payments." In the same letter, Defendant Kolinsky also directed Donnelley that pursuant to C.G.S. Section 31-284b ". . . Ms. Prevost is eligible for ongoing benefits and if you convert her policy (group life), you may be required to pay the premiums as long as she is receiving compensation benefits. The same would be true of her medical insurance."

19. Section 514(a) of ERISA, 29 U.S.C. Section 1144(a), provides that, with certain exceptions not applicable here, the provisions of Title I and Title IV of ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any

employee benefit plan described in section 4(a) and not exempt under section 4(b)."

20. There is a justiciable controversy among the parties as to whether Section 514 of ERISA, 29 U.S.C. Section 1144, preempts application of C.G.S. Section 31-284b to Donnelley's Plans.

21. Upon information and belief, Donnelley believes that Defendants Kolinsky, Arcudi, and Lieberman intend to seek enforcement of the provisions of C.G.S. Section 31-284b against Donnelley and an order compelling Donnelley to provide life insurance, health and dental benefits to Defendant Prevost at Donnelley's expense for as long as Defendant Prevost is eligible to receive or is receiving workers' compensation payments.

V. PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court award the following relief:

1. Enter an Order declaring that C.G.S. Section 31-284b, as applied to Donnelley's Plans, is preempted by Section 514 of ERISA, 29 U.S.C. Section 1144.

2. Permanently enjoin the Defendants from enforcing or seeking to enforce C.G.S. Section 31-284b against Donnelley.

3. Provide such other relief as is just and equitable.

PLAINTIFF,
R.R. DONNELLEY & SONS COMPANY

/s/

Thomas Z. Reicher
Daniel L. FitzMaurice
Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499
(203) 275-0100

§ 1002. DEFINITIONS

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

§ 1003. COVERAGE

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if-

(1) such plan is a governmental plan (as defined in sections 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under sections 410(d) of title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit

of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

§ 1144. OTHER LAWS

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter related to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

PART 2510-DEFINITIONS OF TERMS USED IN SUBCHAPTER C, D, E, F, AND G OF THIS CHAPTER

Sec.
2510.3-1 Employee welfare benefit plan.

* * *

Sec 2510.3-1 Employee welfare benefit plan.

* * *

(b) Payroll practices. For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include;

(1) Payment by an employer of compensation on account of work performed by an employee, including compensation at a rate in excess of the normal rate of compensation on account of performance of duties under other than ordinary circumstances, such as:

(i) Overtime pay,
(ii) Shift premiums,
(iii) Holiday premiums,
(iv) Weekend premiums;

SEC. 31-51h. Employer not to cancel insurance coverage or cease making contributions to welfare fund of employee eligible to receive or receiving workers' compensation or sick leave payments. Employer accident report. Complaint. Hearing. Appeal. (a) No employer, private, municipal, or state, shall cancel or withhold accident and health insurance or life insurance coverage of any employee or his dependents or cease to make payments or contributions at the regular hourly or weekly rate for full-time employees for each week of disability to an employee's welfare fund as defined in subsection (h) of section 31-53 while the employee is eligible to receive or is receiving workers' compensation payments pursuant to chapter 568 or is receiving a continuation of salary or wages under a provision for sick leave payments for time lost for on the job injury. Such accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: Medical, surgical, dental, nursing and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care. Any employee aggrieved by an act of any employer in violation of this section shall have a cause of action for damages for any injury suffered by him because of such violation. All costs of such suit including reasonable attorney's fees shall be charged to any defendant employer who is adjudged to have violated this section. The injured employee's employer when reporting the accident to the workers' compensation commissioner shall furnish the commissioner with information as to the time of the injury and as to the amount of payment or contribution payable to any employee welfare fund on a forty hour week of work. The commissioner in awarding benefits for temporary and permanent partial and total disability shall require continuation of such insurance coverage or contribution to an employee welfare fund by forty hours for the period of the injured employee's eligibility to receive workers' compensation benefits.

(b) Any employee eligible to receive or receiving workers' compensation may file a complaint alleging violation of the

provisions of subsection (a) of this section with the workers' compensation commissioner. Said commissioner shall hold a hearing in accordance with the provisions of sections 31-297 and 31-298. After such hearing, the commissioner shall send to each party a written copy of his award in accordance with the provisions of section 31-300. The provisions of said section concerning finality of the award and an execution issued upon the award shall be applicable to an award made pursuant to this section. Any appeal of an award of the commissioner under this section shall be taken in accordance with the provisions of section 31-301.

Sec. 31-53. Construction, alteration or repair of public works projects by state or political subdivision; wage rates. Penalties for violations.

(h) As used in this section, section 31-54 and section 31-89a, "employee welfare fund" means any trust fund established by one or more employees and one or more labor organizations to provide from moneys in the fund, whether through the purchase of insurance or annuity contracts or otherwise, benefits under an employee welfare plan; provided such term shall not include any such fund where the trustee, or all of the trustees, are subject to supervision by the commissioner of banking of this state or any other state or the Comptroller of the Currency of the United States or the board of governors of the Federal Reserve System, and "benefits under an employee welfare plan" means one or more benefits or services under any plan established or maintained for employees or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care benefits; benefits in the event of sickness, accident, disability or death; benefits in the event of unemployment, or retirement benefits.

Sec. 31-284b. Employer to continue insurance coverage or welfare fund payments for employees eligible to receive workers' compensation. Use of second injury fund. (a) In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare fund, as defined in section 31-53, shall provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury.

(b) An employer may provide such equivalent accident and health or life insurance coverage or welfare fund payments or contributions by: (1) Insuring his full liability under this act in such stock or mutual companies or associations as are or may be authorized to take such risks in this state; (2) creating an injured employee's plan as an extension of any existing plan for working employees; (3) self-insurance; or (4) by such combination of the above-mentioned methods as he may choose.

(c) In the case of an employee welfare fund, an employer may provide such equivalent protection by making payments or contributions for such hours of contributions established by the trustees of the employee welfare fund as necessary to maintain continuation of such insurance coverage when such amount is less than the amount of regular hourly or weekly contributions for full-time employees.

(d) In any case where workers' compensation payments to an individual for total incapacity under the provision of section 31-307 continue for more than one hundred four weeks, the cost of such accident and health insurance or life insurance coverage after

the one hundred fourth week shall be paid out of the second injury fund in accordance wit the provisions of section 31-349.

(e) Such accident and health insurance coverage may include but shall not be limited to coverage provided by insurance or directly by the employer for the following health care services: Medical, surgical, dental, nursing and hospital care and treatment, drugs, diagnosis or treatment of mental conditions or alcoholism, and pregnancy and child care.

#84-93

EMPLOYEES, PUBLIC-INSURANCE-RETIREMENT-WORKMEN'S COMPENSATION

Retired State employees who are receiving workers' compensation benefits are entitled to insurance coverage equal to the coverage provided to active employees. Where union and State agency, by stipulating to resolve a grievance, retroactively reinstate a State employee who had died, Comptroller was obligated to honor agreement and pay life insurance benefits to employee's beneficiaries.

July 24, 1984

Honorable J. Edward Caldwell
State Comptroller
30 Trinity Street
Hartford, CT 06106

Dear Mr. Caldwell:

This will acknowledge and respond to your request for advice dated April 9, 1984, in which you request our opinion regarding Conn. Gen. Stat. § 31-284b. Your letter states that under current procedure, when an individual who is receiving workers' compensation specific indemnity benefits elects to receive retirement benefits under the State Employees' Retirement System, his or her health insurance coverage is not maintained at the level provided for active State employees. Such an individual will instead receive reduced health insurance coverage afforded to all retired State employees.

You have requested our advice regarding the rights of a former State employee, now retired, who is receiving workers' compensation specific indemnity benefits on account of an injury which occurred November 28, 1975. You also request that we advise you as to whether the procedure you describe is currently in compliance with the law.

The correspondence from the retired employee's attorney, enclosed with your request for advice cites, in support of her claim, Section 31-284b which provides in part:

> In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare fund, as defined in section 31-53, shall provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury.

The above statute in 1982 was enacted as 1982 Conn. Pub Acts. No. 82-398, § 3, and is part of the Workers' Compensation Act, Chapter 568 of the Connecticut General Statutes.

Your question concerns the rights of an employee who was injured on November 28, 1975. The rights and obligations of the employer and the employee under the Workers' Compensation Act are fixed and determined by the contractual and statutory provisions in force at the time the employee was injured. *Chieppo v. Robert E.*

McMichael, Inc., 169 Conn. 646, 649 (1975), citing *Rossi v. Thomas F. Jackson Co.*, 120 Conn. 456, 460 (1935); *Walsh v. Waldron & Sons*, 112 Conn. 579, 582 (1931). Section 31-284b had not been enacted at the time of the injury in question. We must look to the law as it existed at the time of the injury to determine the individual's rights.

The applicable law at the time of the injury provided as follows:

> No employer, private, municipal or state, shall cancel or withhold accident and health insurance or life insurance coverage of any employee or his dependents while the employee is receiving workmen's compensation payments pursuant to chapter 568 or is receiving a continuation of salary or wages under a provision for sick leave payments. Any employee aggrieved by an act of any employer in violation of this section shall have a cause of action for damages for any injury suffered by him because of such violation. All costs of such suit shall be charged to any defendant employer who is adjudged in violation of this section.

1976 Conn. Pub. Acts. No. 67-782, effective October 1, 1967, codified as Conn. Gen. Stat. § 31-51h and repealed in 1982 by P.A. 82-398, § 7. "Statutes should be construed so as to carry out the intent of the legislature.... [W]here the language is of doubtful meaning, the object of the legislation as well as all other relevant circumstances should be considered." *Royce v. Heneaqe*, 170 Conn. 387, 391 (1976), citing *Jarvis Acres, Inc. v. Zoning Commission*, 163 Conn. 41, 46 (1972); *McAdams v. Barbieri*, 143 Conn. 405, 416 (1956). Words used in a statute must be construed according to their context; statutes relating to the same subject matter may be looked to for guidance in determining the meaning of a statutory term. *Doe v. Institute of Living, Inc.*, 175 Conn. 49, 57-58 (1978) citing *New Haven v. United Illuminating Co.*, 168 Conn. 478, 485 (1975); *Levin-Townsend Computer Corp. v. Hartford*,

166 Conn. 405, 411 (1974). "There is a presumption that the legislature, in enacting a law, did so in view of existing relevant statutes and intended it to be read with them so as to make one consistent body of law." *State v. Jordan*, 142 Conn. 375, 378 (1955).

Section 31-51h required maintenance of insurance coverage of "any employee or his dependents while the employee is receiving workmen's compensation payments pursuant to chapter 568...." The Workers' Compensation Act has provided a system of compensation to persons who become incapacitated as the result of injuries arising out of and in the course of employment. *See* Conn. Gen. Stat. § § 31-284(a), 31-306, 31-307, 31-307b, 31-308, 31-308a. If a person was an employee at the time of a compensable injury, he or she is eligible for workers' compensation benefits whether or not the individual remains in the employ of the employer. This principle is not specifically set out in the statute, but it is evident from the statutory scheme of Chapter 568. For example, payments for total incapacity are payable so long as the incapacity continues. Conn. Gen. Stat. § 31-307. Compensation for partial incapacity takes into account the individual's earnings or potential earnings in other employment. Conn. Gen. Stat. § 31-308(a). In addition, Conn. Gen. Stat. § 5-170 provides rules to be applied where an individual who is retired is receiving payment under the Workers' Compensation Act. The Workers' Compensation Act makes no exception for retired employees from its coverage. Section 31-51h should be construed to apply to the same persons who are covered by the Workers' Compensation Act. There is no reasonable basis for a distinction among workers' compensation beneficiaries. It must be assumed that a reasonable and rational result was intended and rational result was intended by the legislature. *Norwich Land Co. v. Public Utilities Commission*, 170 Conn. 1, 4 (1975), citing *Citerella v. United Illuminating Co.*, 158 Conn. 600, 609 (1969). We conclude that Section 31-51h required that accident and health insurance or life insurance coverage be maintained at the level applicable to active employees while a retired employee is receiving workers' compensation payments.

In stating our opinion that Section 31-51h should be applied, we are not unmindful of the fact that the statute has been held to be unconstitutional as to some employees. *Stone & Webster Engineering Corp. v. Ilsley*, 518 F. Supp. 1297 (D. Conn. 1981), *modified and aff'd*, 690 F.2d 323 (2d. Cir. 1982), *aff'd sub nom. Arcudi v. Stone & Webster*, ___ U.S. ___, 103 S. Ct. 3564, 77 L.E.d.2d 1405 (1983). The United States District Court ruled that Section 31-51h was void under the Supremacy Clause, U.S. Const. art. VI, cl. 2, because it was preempted by the Federal Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1381 (hereafter ERISA). *Stone & Webster, supra*, 518 F. Supp. at 1302. However, the United States Court of Appeals affirmed the District Court's ruling that Section 31-51h was void only "insofar as it affects employee benefit plans covered by ERISA." *Stone & Webster, supra*, 690 F.2d at 330. Since State employees' benefits are not within the coverage of ERISA, the statute was not unconstitutional under the decision in *Stone & Webster, supra*, as modified by the United States Court of Appeals. *See* 29 U.S.C. § 1003(b)(1).

Your second question is whether your current procedure is in compliance with statute. As we have stated above, insofar as it fails to apply Section 31-51h to retired employees, your procedure is not in compliance with the law. With regard to employees who are collecting workers' compensation benefits on account of injuries occurring on or after October 1, 1982, Section 31-284b should be applied.[1] For the reasons stated below, it is our opinion that Section 31-284b includes retired employees in its coverage.[2]

---

[1] P.A. 82-398, effective October 1, 1982, repealed Section 31-51h and enacted what is now 31-284b.

[2] We have considered the possible effect of Conn. Gen. Stat. § 5-259 on the rights of retired State employees collecting workers' compensation payments, and have concluded that the above statute does not affect the operation of Sections 31-51h or 31-284b. Section 5-259 provides State employees and returned former state employees with the right to insurance coverage which

(*Continued . . .*)

Section 31-284b was enacted for the purpose of bringing the requirements of Section 31-51h into the Workers' Compensation Act without substantive change, in response to the District Court decision in *Stone & Webster, supra.* In *Stone & Webster,* the defendants had argued that Section 31-51h was exempt from ERISA under the provision exempting benefit plans "maintained solely for the purpose of complying with applicable workmens' compensation laws...." 29 U.S.C. § 1003(b)(3). The Court rejected this argument, stating that Section 31-51h was not a workers' compensation law. While the appeal was pending before the United States Court of Appeals, Section 31-284b was enacted. P.A. 82-398, § 3. Senator Skelley's remarks on the Senate floor illustrate the purpose of P.A. 82-398. He stated:

> What we are doing here is taking the exact same language and moving it into workers' compensation statutes. There is no change in benefits.... We feel that if we move it into the workers' comp statutes that we would meet some of the problems that the court has already pointed out.

25 Conn. S. Proc. Pt. 4, 1982 Sess. 1170 (1982).

Since Section 31-284b was enacted as part of the Workers' Compensation Act, it must be construed with all the parts of the Act. "[A]ll parts of an Act are to be construed together, and it is not permissible to rest construction upon any one part alone. The

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(. . . *Continued*)

shall be, at a minimum, at the level specified therein. There is a presumption that the legislature, in enacting a law, did so in view of existing relevant statutes and intended it to be read with them so as to make one consistent body of law. *Little v. Ives,* 158 Conn. 452, 455 (1969). Since Section 5-259 refers to minimum benefits, then to the extent that the benefits under Sections 31-51h or 31-284b exceed the requirements of Section 5-295, the greater benefits should be provided.

general intention is the key to the whole Act, and the intention of the whole controls the interpretation of all its parts." *Kelley v. Dewey*, 111 Conn. 281, 286 (1930). For the reasons we have stated above, it is our conclusion that the Workers' Compensation Act is intended to benefit returned employees who have sustained compensable injuries while employed.

In summary, returned State employees who are collecting workers' compensation payments on account of injuries occurring on or after October 1, 1967 and before October 1, 1982, are covered under the provisions of Section 31-51h. Retired State employees who are collecting workers' compensation payments on account of injuries sustained on or after October 1, 1982 are covered by Section 31-284b. In either case, insurance coverage must be maintained at the level provided for active employees.

Very truly yours,

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Attorney General

By: J. Sarah Posner
Assistant Attorney General

(2)

Supreme Court, U.S.
FILED
MAR 7 1991
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No. 90-1249

In The Supreme Court Of The United States

OCTOBER TERM, 1990

R.R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, under *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), § 4(b)(3) of ERISA saves from ERISA preemption Connecticut General Statutes § 31-284b.

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STATEMENT OF THE CASE

The Statute

The respondents disagree with the petitioner's characterization of § 31-284b of the Connecticut General Statutes at issue in this case. By its terms, the statute applies to all employers providing life, health, and accident benefits to active employees, whether or not the employer's plan is covered by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.* Conn. Gen. Stat. § 31-275(6), Respondents' Appendix ("R. App.") A1; Conn.

Gen. Stat. § 31-284b, Petitioner's Appendix ("Pet. App.") A59-60. Similarly, the employer's obligation under § 31-284b is measured by the employee's level of "income" from all sources prior to injury, including life, health, and accident insurance benefits, whether or not these benefits were provided by ERISA-covered plans. Conn. Gen. Stat. § 31-275(14), R. App. A2.

The respondents also disagree with the petitioner's characterizations of § 31-284b and its statutory predecessor, Connecticut General Statutes § 31-51h. Pet. App. A56-57. The petitioner states that § 31-51h prohibited employers from discontinuing benefits to employees eligible to receive workers' compensation, and that § 31-284b continues this prohibition with the nominal option of providing equivalent benefits under separately administered plans. Petition, p. 4. The respondents respectfully note that the petitioner's emphasis on the perceived similarities between the two plans is misplaced, and that, of the five options provided by § 31-284b for the provision of continued or equivalent benefits to injured employees, four options contemplate the creation of separately administered plans exempt from ERISA's scope.

The Role of the Parties

The petitioner, R. R. Donnelley & Sons Company ("Donnelley") voluntarily provides life insurance and health and dental benefits to its employees through employee welfare benefit plans covered by ERISA. Pet. App. A33-34. At some time after May, 1983, the respondent Judy Prevost, a Donnelley employee in Connecticut, suffered work-related injuries. Pet. App. A36. These injuries necessitated Prevost's absence from work from May 1, 1986 to May 25, 1988, except during the period from February 9, 1987 to February 27, 1987, when she temporarily returned to work. Pet. App. A36. Prevost has remained eligible to receive and has received workers' compensation payments since December 5, 1985. Pet. App. A48.

From May 1, 1986 to May 25, 1988, during Prevost's absence from work, Donnelley maintained Prevost in active status and continued to provide her with life insurance and health and dental benefits in accordance with its employment policies and employee welfare benefit plans. Pet. App. A36. Donnelley terminated Prevost's dental benefits on May 25, 1988, health benefits on June 25, 1988, and life insurance coverage on June 26, 1988. Pet. App. A37. Prevost was advised of her right to continue these coverages at her own expense. Pet. App. A37.

By letter dated May 19, 1988, Respondent State Compensation Commissioner Gerald Kolinsky reminded Donnelley of its obligation under Connecticut General Statutes § 31-284b to continue to provide accident, health, and life insurance benefits to Prevost while she remained eligible to receive workers' compensation benefits. Pet. App. A37-38, R. App. A3. This action followed.

Course of the Proceedings

Donnelley brought suit in the United States District Court for the District of Connecticut seeking injunctive relief and a declaration that § 31-284b was preempted by § 514(a) of ERISA, 29 U.S.C. § 1144(a). Pet. App. A44-50. The parties filed cross motions for summary judgment on this issue.

On April 12, 1989, the District Court rendered summary judgment for the respondents, ruling that although § 31-284b relates to employee benefit plans covered by ERISA, § 31-284b is exempt from preemption under § 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), under this Court's ruling in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Pet. App. A18-27. The Court of Appeals for the Second Circuit affirmed the opinion and judgment of the District Court on September 24, 1990, Pet. App. A1-17, and denied the petitioner's motion for rehearing and suggestion for rehearing in banc on November 1, 1990, Pet. App. A32.

SUMMARY OF ARGUMENT

The petitioner misstates the scope of Connecticut General Statutes § 31-284b, a workers' compensation statute which requires employers providing accident, health, and life insurance coverage, or welfare fund payments, to active employees, to continue such benefits, or their equivalent, for employees entitled to workers' compensation. Section 31-284b applies to all employers, including employers whose benefit plans are exempt from ERISA coverage in the first instance under §§ 4(b)(1) and (2) of ERISA. Contrary to the petitioner's assertion, § 31-284b is not directed solely to ERISA plan sponsors or to ERISA-covered plans.

The Second Circuit opinion is consistent with the decision in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and does not conflict with applicable decisions of this Court. The statute requires employer compliance in an area of law expressly reserved to the states by Congress in § 4(b)(3) of ERISA. Unlike its statutory predecessor, Connecticut General Statutes § 31-51h, § 31-284b provides optional methods of employer compliance with its requirements. It does not require compliance through ERISA-covered plans.

The Second Circuit correctly applied the two-tier analysis employed by this Court in *Shaw, supra*, in determining whether § 31-284b was preempted by ERISA § 514(a), 29 U.S.C. § 1144(a). Under *Shaw*, a finding that a state law "relates to" ERISA-covered plans is not dispositive and serves only to prompt the further inquiry whether any exception in ERISA saves the statute from preemption. Neither the nature of the impermissible relation to ERISA-covered plans nor the type or level of employee benefits contemplated by the state law operates to preclude this further inquiry.

Congress never intended uniformity in the areas of law specifically reserved to the states under ERISA § 4(b)(3), nor did Congress intend, at the same time that it preserved the

role of the states, to make enforcement of state laws in those areas impossible. Section 31-284b does no more than the statute found by this Court to be excepted from preemption in *Shaw, supra.* The Second Circuit decision does not undermine ERISA's goal of national uniformity in the regulation of employee benefit plans.

ARGUMENT

I. THE DECISION OF THE SECOND CIRCUIT DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The decision of the Second Circuit below, Pet. App. A1-17, that Connecticut General Statutes § 31-284b is excepted from preemption under§ 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), does not conflict with applicable decisions of this Court and is wholly consistent with the decision in *Shaw, supra.* Section 4(b)(3) exempts from ERISA coverage those employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws." 29 U.S.C. 1003(b)(3), Pet. App. A52.

That § 31-284b is a workmen's compensation law is beyond question. The stated purpose of the statute is "to maintain, as nearly as possible, the income of employees who suffer employment-related injuries . . . ." Conn. Gen. Stat. § 31-284b, Pet. App. A59. "Income" is defined in the Connecticut Workers' Compensation Act as "all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare fund contributions." Conn. Gen. Stat. § 31-275(14), R. App. A2. As the District Court correctly noted:

> . . . the statute does not intrude upon the initial decision to provide such benefits but rather requires the continuation of benefits equivalent to those provided incident to employment, as a form of compensation to employees who suffer employment related injuries. It would preserve the level of compensation of an employee injured in his employment during the period of compensated disability.

Pet. App. A25.

Section 31-284b requires *"any employer, as defined in section 31-275,* who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions . . . to an employee welfare fund . . . [to] provide such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments . . . ." Conn. Gen. Stat. § 31-284b (emphasis supplied), Pet. App. A59. "Employer" is defined in § 31-275(6) of the Workers' Compensation Act as including the state and any public corporation within the state. Conn. Gen. Stat. § 31-275(6), R. App. A1.

The petitioner repeatedly asserts to this Court that § 31-284b applies only to employers who sponsor ERISA-covered plans. By its terms, however, § 31-284b applies to all employers who provide accident, health, and life insurance benefits, whether or not the employer's plan is covered by ERISA. Governmental and church employee benefit plans are not covered by ERISA under § 4(b)(1) and (2) of ERISA, 29 U.S.C. § 1003(b)(1), (2). Governmental and church employers, however, are subject to § 31-284b. The petitioner acknowledged before the Second Circuit that, "[t]here are, however, two categories of plans providing health and life insurance benefits to employees generally that *fall within Section 31-284b but are exempted from ERISA coverage* -- namely governmental and church plans. ERISA § 4(b)(1), (2), 29 U.S.C. § 1003(b)(1), (2)." (Brief of Appellant R. R. Donnelley

& Sons Company at Second Circuit, p. 15, n. 12) (emphasis supplied). The petitioner's current claim suffers from overreaching.

Subsection (b) of § 31-284b provides four options by which an employer can meet its statutory obligation to continue benefits: (1) by purchasing insurance; (2) by "creating an injured employee's plan as an extension of any existing plan for working employees"; (3) by self-insuring; or (4) by combining as many of the above-mentioned methods as the employer may choose. Conn. Gen. Stat. § 31-284b(b), Pet. App. A59. Subsection (c) of § 31-284b permits, but does not require, the additional option of continuing payments or contributions to an employee welfare fund, where the terms and conditions of the fund permit. Conn. Gen. Stat. § 31-284b(c), Pet. App. A59.

The four optional methods of employer compliance provided in subsection (b) of § 31-284b clearly contemplate the creation of separately administered plans maintained solely to comply with the requirements of a state workers' compensation law. An additional option, of continuing contributions to an existing welfare fund where the terms and conditions of the fund permit, is provided in subsection (c). As the Second Circuit and District Court below ruled, that additional option was expressly endorsed under ERISA § 4(b)(3) by this Court in *Shaw, supra.* Pet. App. A13; Pet. App. A27.

In *Shaw, supra,* the Court confronted the question whether § 514(a) of ERISA, 29 U.S.C. § 1144(a), preempted a New York Disability Benefits Law that required employers to pay sick leave benefits to employees unable to work because of pregnancy or other nonoccupational disabilities. Section 514(a) preempts state laws which "relate to employee benefit plans described in section 1003(a) [of ERISA] and not exempt under section 1003(b) . . . ." 29 U.S.C. § 1144(a), Pet. App. A54. The Court held that, although the Disability Benefits Law clearly "relate[d] to" ERISA-covered employee benefit plans under § 514(a) because it required employers to pay

specific benefits, the statute, nevertheless, was not preempted by ERISA. *Shaw*, 463 U.S. at 97, 109. Addressing the possibility that employers might attempt to circumvent state laws by adopting employee benefit plans that combine disability benefits inferior to those required by state law with other benefits, the Court said:

> . . . while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan. If the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply. The Court of Appeals erred, therefore, in holding that appellants are not at all free to enforce the Disability Benefits Law against those appellees that provide disability benefits as part of multibenefit plans.

Shaw, 463 U.S. at 108.

Donnelley argues that "only by significantly misreading *Shaw*" could the Second Circuit have concluded that § 31-284b is not preempted by ERISA. Petition, p. 12. The respondents take issue with the petitioner's attempt to recast as "dictum" the guiding principle of this Court's holding in *Shaw*, upon which both the Second Circuit and the District Court relied. In *Shaw*, this Court said:

> A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit. Such a plan would be exempt under § 4(b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a multibenefit ERISA plan [citation omitted] does not

make the state law wholly unenforceable as to employers who choose that option.

Shaw, 463 U.S. at 108. The Second Circuit, presented with the statutory scheme contemplated and approved in *Shaw*, *supra*, correctly concluded that § 31-284b is not preempted by ERISA.

The petitioner mistakenly relies on the Second Circuit's observation that ". . . section 31-284b has precisely the same impact upon private employee benefit plans that we discerned former section 31-51h to have in *Stone*." Petition, p. 6, Pet. App. A9. Section 31-51h was fatally flawed, not because it imposed an additional statutory requirement on employers, but because it required employers to alter the terms and conditions of ERISA plans in order to comply with its terms. In analyzing § 31-284b in the context of the decision in *Shaw*, the Second Circuit correctly recognized the critical distinction between requiring employer compliance with state laws in areas expressly reserved to the states under § 4(b)(3) of ERISA, which is permissible, and requiring compliance in those areas through ERISA-covered plans, which is not permissible. In other words, under § 31-284b, any effect of the statute on private employee benefit plans is at the option of the employer.

Under *Shaw*, the choice of the means of compliance with state workers' compensation, disability insurance, and unemployment compensation laws is left to the employer; the choice of compliance or noncompliance with these laws is not. The rationale of *Shaw* was the removal of the terms and conditions of ERISA plans as barriers to the enforcement of state laws in areas expressly reserved to the states under § 4(b)(3) of ERISA. *Shaw*, 463 U.S. at 108. The effect of the decision was the validation of state efforts to require employer compliance in these areas.

II. NEITHER AN IMPERMISSIBLE RELATION BETWEEN A STATE LAW AND ERISA PLANS NOR THE NATURE OR LEVEL OF THE MANDATED BENEFITS DETERMINES PREEMPTION BY ERISA.

The petitioner argues that the finding that § 31-284b "relates to" ERISA-covered plans under § 514(a) of ERISA, should have been dispositive of the Second Circuit's inquiry into preemption. In the petitioner's view, the Second Circuit erroneously undertook to determine whether § 31-284b was saved from preemption under § 4(b)(3) of ERISA and, in the process, significantly departed from controlling precedent of this Court.

The two-tier analysis of the Second Circuit was wholly consistent with the analytical approach employed by this Court in *Shaw, supra.* This Court said in *Shaw,* "[t]he issues are whether the Human Rights Law and Disability Benefits Law 'relate to' employee benefit plans within the meaning of § 514(a), . . . *and, if so, whether any exception in ERISA saves them from pre-emption.*" *Shaw,* 463 U.S. at 96 (emphasis supplied). Accordingly, the Second Circuit correctly understood that the finding of an impermissible relation under § 514(a) of ERISA served only to trigger the second step of the *Shaw* analysis, not to preclude further inquiry.

The petitioner relies on *Alessi v. Raybestos-Manhattan, Inc.,* 451 U.S. 504 (1981), *Ingersoll-Rand Co. v. McClendon,* ____ U.S. ____, 111 S. Ct. 478 (1990), and *Mackey v. Lanier,* 486 U.S. 825 (1988), for the proposition that the scope of the preemption inquiry is limited by a finding that a state law "relates to" ERISA-covered plans under § 514(a). The petitioner's argument attempts to prove too much, in that none of the cited cases involved a state law which contemplated compliance through separately administered plans. The opportunity to employ the two-tier analysis of *Shaw,* therefore, was not presented.

The petitioner further argues that the type and level of the mandated benefits can be determinative of an impermissible relation and, therefore, of preemption under § 514(a) of ERISA. The petitioner attempts to distinguish the Disability Benefits Law at issue in *Shaw, supra,* from § 31-284b by arguing that the disability benefit in *Shaw* was measured by the employee's weekly wage, not itself an ERISA-covered benefit, whereas both the nature and the level of the benefits mandated by § 31-284b refer to benefits customarily provided by employee welfare plans. By arguing that the Disability Benefit Law "made no reference to ERISA-covered plans," Petition, p. 13, the petitioner appears to be arguing that the law did not "relate to" ERISA plans within the meaning of § 514(a) of ERISA. This argument overlooks both the clear finding to the contrary in *Shaw,* 463 U.S. at 97, and the obvious nature of the disability benefit mandated by the New York statute. Neither the nature nor the level of the mandated benefits, therefore, is relevant to the question of preemption under the *Shaw* analysis.

III. CONGRESS DID NOT INTEND UNIFORMITY IN THOSE AREAS OF LAW EXPRESSLY RESERVED TO THE STATES UNDER § 4(b)(3) OF ERISA.

The petitioner argues that the decision of the Second Circuit, that § 31-284b is not preempted by ERISA, will undermine the national uniformity of laws applicable to ERISA-covered plans and will permit states to impose inconsistent burdens on employers. The petitioner suggests that states will resurrect and recodify as workers' compensation, disability insurance, or unemployment compensation laws, statutes previously preempted by ERISA and dependent upon benefits provided by ERISA-covered plans. As previously argued, however, the petitioner has mischaracterized § 31-284b.

The scenario posed by the petitioner is illusory, both in law and in fact. The goal of national uniformity was never intended by Congress to apply to laws in the areas of workers' compensation, disability insurance, or unemployment compensation. Congress, by explicitly reserving these areas to the states in § 4(b)(3) of ERISA, recognized that state laws in these areas would differ. This Court stated in *Shaw, supra,* that, "Congress surely did not intend, at the same time it preserved the role of state disability laws, to make enforcement of those laws impossible." *Shaw,* 463 U.S. at 108.

The District Court observed that, "[s]ection 31-284b does no more than the statute found to be exempt from preemption in *Shaw.*" Pet. App. A27. Accordingly, the Second Circuit decision sets no precedent and does not threaten ERISA's goal of national uniformity.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit in this matter should be denied.

Respectfully submitted,

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Sec. 31-275. Definitions. Terms in this chapter are defined as follows:

(6) "Employer" means any person, corporation, firm, partnership, voluntary association, joint stock association, the state and any public corporation within the state using the services of one or more employees for pay, or the legal representative of any such employer, but all contracts of employment between an employer employing persons excluded from the definition of employee and any such employee shall be conclusively presumed to include the following mutual agreements between employer and employee: (A) That the employer may accept the provisions of this chapter and become bound thereby by forthwith complying with section 31-284; (B) that, if the employer so accepts the provisions of this chapter, the employee shall thereupon be deemed to accept such provisions and shall be bound thereby, unless the employer neglects or refuses to furnish forthwith to the employee, on his written request, evidence of compliance with section 31-284, in the form of a certificate from the compensation commissioner, the insurance commissioner or the insurer, as the case may be; (C) that the employee may, at any time, withdraw his acceptance of such provisions and become released therefrom by giving written or printed notice of such withdrawal to the commissioner having jurisdiction and also to the employer, and such withdrawal shall take effect forthwith from the time of its service on the commissioner and the employer; and (D) that the employer may withdraw his acceptance and the acceptance of the employee by filing a written or printed notice of his withdrawal with such commissioner and with such employee, which withdrawal shall become effective forthwith from the time of its service on the commissioner and the employee. The notices of acceptance and withdrawal to be given by an employer employing persons excluded from the definition of employee and the notice of withdrawal to be given by the employee, as herein provided, shall be served upon such commissioner, employer or employee, either by personal presentation or by registered or certified mail. In determining the number of employees

employed by an individual, the employees of a partnership of which he is a member shall not be included. A person who is the sole proprietor of a business or who is a partner in a business may accept the provisions of this chapter by notifying the workers' compensation commissioner having jurisdiction, in writing, of his intent to do so. If such person accepts the provisions of this chapter he shall be considered to be an employer and shall insure his full liability in accordance with subdivision (2) of subsection (b) of section 31-284. Such person may withdraw his acceptance by giving notice of his withdrawal, in writing, to such commissioner.

Sec. 31-275. Definitions. Terms in this chapter are defined as follows:

(14) "Income" means all forms of remuneration to an individual from his employment, including wages, accident and health insurance coverage, life insurance coverage and employee welfare plan contributions.

GERALD KOLINSKY
Compensation Commissioner
Eighth District

62 Washington Street
Middletown, Connecticut 06457
TEL. 344-7453

State of Connecticut
WORKERS' COMPENSATION COMMISSION

May 19, 1988

Mr. Bernard F. Johnson
Personnel Coordinator
R.R. Donnelley & Sons Co.
Schoolhouse Road
Old Saybrook, CT 06475

Re: Judy Prevost vs. R.R. Donnelley & Sons
DI: 11/28/85

Dear Mr. Johnson:

Enclosed please find a photocopy of your letter to Ms. Prevost, dated May 2, 1988, which she dropped off here yesterday.

I have placed an asterisk next to your fifth paragraph, and wish to remind you that Section 31-284b, of the Workers' Compensation Act requires an employer to continue to provide to an injured employee continuing coverage for group accident and health insurance or life insurance coverage while the employee is eligible to receive or is receiving workers' compensation payments. The statute permits the employer to provide equivalent coverage.

To the best of my knowledge, Ms. Prevost is eligible for ongoing benefits, and if you convert her policy (group life), you may be required to pay the premiums as long as she is receiving compensation benefits. The same would be true of her medical insurance.

A copy of Section 31-284b is enclosed for your reference.

Very truly yours,

/s/ Gerald Kolinsky
Gerald Kolinsky
Compensation Commissioner
Eighth District

GK:cs
cc: Gallagher Bassett Services, Inc.
Ms. Judy Prevost
Enc.

Supreme Court, U.S.
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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29 U.S.C. § 1003(b)(3) (1988) 3, 4, 5, 8
29 U.S.C. § 1144(a) (1988) 2, 5, 6
29 U.S.C. § 1144(b)(2)(A) (1988) 7

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Conn. Gen. Stat. § 31-284b(1989) ..... passim

37 D.C. Reg. 6890 (D.C. Code § 36-307(a-1))(1990) ..... passim

N.Y. Work. Comp. Law §§ 200-242
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29 C.F.R. § 2510.3-1(b)(1)(1990) 4

No. 90-1249

In The Supreme Court of the United States

OCTOBER TERM, 1990

R. R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District, State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners, State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

SUMMARY OF ARGUMENT

Respondents attempt to avoid ERISA preemption of Conn. Gen. Stat. § 31-284b (1989)("section 31-284b"), despite the state law's relationship to ERISA-covered plans, by presenting a series of misdirected and erroneous arguments. Their most significant

misconception takes the form of an analogy between section 31-284b and the New York Disability Benefits Law ("DBL")[1] that was upheld in *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85 (1983). According to respondents, this Court found in *Shaw* that the DBL "related to" ERISA-covered plans. Respondents' Brief in Opposition ("Res. Br.") at 4, 7. To the contrary, *Shaw* upheld the DBL precisely because the benefit plans to which it related were exempt from ERISA coverage.

Respondents' many other misconceptions demonstrate the weakness of the case in favor of this statute, and highlight the need for certiorari. Moreover, a new law in the District of Columbia further illustrates the threat of inconsistent local regulation of ERISA-covered plans. This law requires employers to provide equivalent health insurance coverage for up to one year to employees who are eligible to receive workers' compensation. 37 D.C. Reg. 6890 (D.C. Code § 36-307(a-1)(1990)) (Reply Appendix at RA1). Thus, a patchwork scheme of differing state burdens on sponsors of interstate benefit plans has already begun to emerge with respect to welfare benefits for certain employees. This Court should grant its Writ of Certiorari to carry out the Congressional objectives underlying ERISA.

A. Respondents' Opposition To The Petition Is Based Upon A Series Of Misconceptions

1. Misconception: *Shaw* held that the New York "Disability Benefits Law 'related to' ERISA-covered employee benefit plans"[2]

ERISA preempts state laws that relate to benefit plans covered by ERISA; it does not preempt laws relating to exempt plans, which fall outside of ERISA's coverage. ERISA § 514(a), 29 U.S.C. § 1144(a)(Pet. App. at A54). This straightforward provision creates a

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[1] N.Y. Work. Comp. Law §§ 200-242 (McKinney 1965 and Supp. 1982-1983).
[2] Res. Br. at 7-8.

problem for respondents because section 31-284b undeniably relates to petitioner's[3] ERISA-covered plans. To avoid this problem, respondents claim this Court found in *Shaw* that the DBL related to ERISA-covered benefit plans. Res. Br. at 7-8. *Shaw*, however, contains no such finding. Respondents' significant misreading of *Shaw*, like the Second Circuit's opinion in the instant case, would turn the law of ERISA preemption on its head.

In *Shaw*, this Court observed that the DBL related to "benefit plans." *Shaw*, 463 U.S. at 96-97. Contrary to respondents' misreading, however, *Shaw* did not hold that the DBL related to benefit plans covered by ERISA. Indeed, *Shaw* held that the DBL related exclusively to benefit plans that were *exempt* from ERISA under § 4(b)(3), 29 U.S.C. § 1003(b)(3) (Pet. App. at A52). *Shaw*, 463 U.S. at 106-08 (holding the DBL was not preempted, after observing that "while the [DBL] plainly is a state law relating to employee benefit plans, it is not preempted if the plans to which it relates, are exempt from ERISA under § 4(b)"). This Court rejected the employer's argument in *Shaw* that the DBL "related to" its ERISA-covered plan because the employer had elected to pay disability benefits through its ERISA-covered plan.

Unlike the DBL, section 31-284b relates to benefit plans covered by ERISA. Accordingly, under *Shaw* and every other Supreme Court case on ERISA preemption, section 31-284b is preempted.

2. Misconception: "Neither the nature nor the level of the mandated benefits . . . is relevant to the question of preemption under the *Shaw* analysis"[4]

Shaw did not create a new or special analytical approach to ERISA preemption. Like other cases, *Shaw* focused on whether the challenged statutes related to plans covered by ERISA. With respect

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[3] *See* Petition for A Writ of Certiorari, List of Parties at ii, identifying petitioner's subsidiaries.

[4] Res. Br. at 11.

to the DBL, the nature and level of mandated benefits did not relate to ERISA-covered plans.[5] The nature of the obligation imposed by the other statute at issue in *Shaw* — the Human Rights Law, which prohibited discrimination in benefits on the basis of pregnancy — did relate to ERISA-covered plans and, thus, was preempted. *Shaw*, 463 U.S. at 100-06. *Shaw's* approach was consistent with *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), which rejected an attempt to regulate pension benefits under the guise of a so-called workers' compensation law. Accordingly, when the nature and level of benefits mandated by a state law, such as section 31-284b, relate to ERISA-covered plans, the state law is preempted. *Ingersoll-Rand Co. v. McClendon*, __U.S.__, 111 S. Ct. 478, 483-84 (1990) (ERISA preempts state law obligations premised upon ERISA-covered plans).

3. Misconception: Section 31-284b is a "workers' compensation statute" because it measures "income" lost while the employee is out of work[6]

Without explaining the significance of their claim, respondents assert that section 31-284b is a "workmen's compensation law" and stress that it measures the lost "income" of inactive employees. Res. Br. at 5. Under a more accurate, functional definition, section 31-284b is really a "benefit plan law" because it regulates only those employers who sponsor benefit plans. Since workers' compensation laws enjoy no general exemption from ERISA preemption,[7] the characterization of section 31-284b as a "workers'

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[5] The DBL mandated benefits based upon the lesser of a flat sum or the employee's weekly wages, 463 U.S. at 89-90, both of which fall outside of ERISA. ERISA § 3(1), 29 U.S.C. § 1002(1) (Pet. App. at A51); 29 C.F.R. § 2510.3-1(b)(1)(1990)(Pet. App. at A55). Moreover, the employer in *Shaw* did not challenge the nature or level of the wage continuation mandated by the DBL. Thus, it is somewhat disingenuous for the Respondents to declare that *Shaw* set forth an analytical framework under which the nature and level of benefits mandated by a state law are irrelevant to ERISA preemption.

[6] Res. Br. at 5.

[7] ERISA § 4(b)(3) exempts from ERISA plans established solely to comply with applicable workers compensation laws; it does not exempt all workers'

compensation law" gains Connecticut nothing. That Connecticut chose to define "income" in relation to benefit plans for active employees merely begs the question of whether ERISA preempts this statute.[8]

The controlling issue is whether section 31-284b relates to ERISA-covered plans. *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523-25 ("[i]t is of no moment that [the state] intrudes indirectly through a workers' compensation law, rather than directly, through a statute called 'pension regulation'"). ERISA preempts section 31-284b because it determines the benefits that an employer must provide to inactive employees by reference to the level of benefits provided to the employer's active employees through ERISA-covered plans.

4. Misconception: Section 31-284b does not target sponsors of ERISA-covered plans because it also applies to churches and governments[9]

Respondents note correctly that section 31-284b affects not only sponsors of benefits plans covered by ERISA but also churches and governments, whose plans are exempt from ERISA. Res. Br. at 6-7 (citing ERISA § 4(b)(1),(2), 29 U.S.C. 1003(b)(1),(2)). Thus, like any other state law that ERISA preempts, section 31-284b could continue in effect with respect to church and governmental plans. ERISA § 514(a), 29 U.S.C. § 1144(a). The inclusion of exempt,

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(footnote continued)
compensation laws. *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 & n.20 (1981).

[8] Under respondent's view of "workers' compensation laws" and "income," States are free to require employers who make pension contributions on behalf of active employees to make up for the pension contribution "income" lost by inactive employees who are eligible to receive workers' compensation. Similarly, respondents would allow states to require that employers make up for pension contribution "income" lost due to unemployment or disability. *See* ERISA § 4(b)(3).

[9] Res. Br. at 6-7.

church and governmental plans, however, does nothing to cure the relationship between section 31-284b and ERISA-covered plans maintained by private, secular employers, such as the petitioner. Among private, secular employers, section 31-284b targets only those who provide welfare benefits to their active employees — i.e. ERISA plan sponsors.

5. Misconception: *Stone* held that the statutory predecessor to section 31-284b was preempted solely because it required compliance through ERISA-covered plans[10]

Stone & Webster Engineering Corp. v. Ilsley, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 420 (1983), held as follows:

> We conclude . . . that section 31-51h of the General Statutes of Connecticut constitutes a forbidden state encroachment on a private employee benefit plan. Its only purpose is to add an additional statutory requirement — the cost of which is to be borne by the employer — to a private employee benefit plan. Thus, the state statute relates to an employee benefit plan as defined by ERISA and must be construed as preempted by 29 U.S.C. § 1144(a).

690 F.2d at 329.

Thus, the court in *Stone* did not, as the Respondents would have it, base its holding upon the absence of alternative means for an employer to carry out the additional statutory requirement. Rather, the court found preemption because that state law related to and burdened ERISA-covered plans.

Neither ERISA's language nor the rationale in *Stone* limits preemption to laws that require compliance through ERISA-covered

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[10] Res. Br. at 9.

plans. A plan sponsor's option to set up a separately administered plan to comply with a state-imposed obligation does not negate that obligation's relationship to the ERISA-covered plan. *See Ingersoll-Rand*, 111 S.Ct. at 483-86 (state common law cause of action based upon the existence of a pension plan is preempted despite the fact that the plaintiff did not seek to recover benefits under the pension plan). *Shaw* merely observed that if an employer elected to provide disability benefits through an ERISA-covered plan, the state could not regulate that plan, but could require establishment of a separate plan to assure compliance with the mandated benefits. Thus, section 31-284b's options for compliance do not save it from ERISA preemption.

6. Misconception: Section 31-284b does not intrude on an employer's initial decision to provide ERISA benefits[11]

Respondents rely upon the District Court's flawed view that section 31-284b does not affect employers' initial decisions to provide welfare benefits to their active employees. This observation, which the Second Circuit did not endorse, is obviously wrong. This Court has more accurately perceived that state-generated burdens on sponsors of ERISA-covered plans encourage employers to reduce or eliminate benefits. *E.g.*, *FMC Corp. v. Holliday*, ____ U.S. ____, 111 S.Ct. 403, 408 (1990); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10 (1987). Moreover, even if the District Court were correct, nothing limits the reach of ERISA preemption to state laws that affect employers' initial decisions to provide benefits.

7. Misconception: Congress reserved to the States the area of workers' compensation.[12]

Congress preserved from ERISA preemption state laws regulating banking, insurance, and securities. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). The exemption in

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[11] Res. Br. at 6.

[12] Res. Br. at 11-12.

ERISA § 4(b)(3) for plans maintained solely to comply with applicable workers' compensation laws does not authorize states to pass workers' compensation laws that relate to ERISA-covered plans. *Alessi v. Raybestos Manhattan, Inc.*, 451 U.S. at 523 & n.20. The failure of Connecticut and other states to appreciate this distinction produces laws like section 31-284b, which burden ERISA plans and their sponsors.

B. The Danger Of Inconsistent Burdens On ERISA Plan Sponsors Is Real

In its initial brief, petitioner warned of the danger of laws like section 31-284b, which piggyback onto ERISA-covered plans. A new law that became effective March 6, 1991 in the District of Columbia further illustrates this threat.

D.C. Code § 36-307(a-1)(1)(1990) provides as follows:

> "Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this act."

Reply App. at RA1.

The new law in the District of Columbia, like section 31-284b, imposes additional obligations on employers who sponsor ERISA-covered benefit plans for their active employees.[13] Under

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[13] Other sections of the D.C. statute limit the period for providing equivalent coverage to fifty-two weeks and allow the employer to obtain reimbursement from a special fund for the cost of the health insurance. 37 D.C. Reg. 6890 (D.C. Code § 36-307(a-1)(3)(5))(RA1). Under section 31-284b, Connecticut employers must provide equivalent coverage for as long as the employee is eligible to receive workers' compensation. In the case of employees like Judy Prevost, who does not claim to be totally disabled, the employer's obligation

respondents' ultimate misconception, both laws would be valid simply because neither requires employers to provide equivalent coverage through their ERISA-covered plans.

Piggyback laws, such as section 31-284b and the District of Columbia's new statute, impose real financial and administrative costs on sponsors of ERISA-covered plans.[14] By reviewing the Second Circuit's decision in this case, this Court can reassert the Congressional goal of national uniformity in benefit plan regulation, and stem the growing tide of state regulation that will erode federal protection of ERISA-covered plans and their sponsors.

(footnote continued)
can last for several years. *See* Conn. Gen. Stat. § 31-284b(d)(1989)(Pet. App. at A59)(providing that the state second injury fund will assume payment of coverage after 104 weeks of eligibility for workers' compensation only with respect to employees who are totally disabled).

[14] The administrative costs alone are not insubstantial. For example, under the D.C statute, which does not allow reimbursement of administrative costs, health insurance benefits are based upon the coverage afforded at the time the employee became eligible to receive workers' compensation benefits. 37 D.C. Reg. 6890 (D.C. Code § 36-307(a-1)(4))(1990). Thus, employers who change the terms of their health coverage must continue to provide coverage to some employees under the terms of the former plan.

CONCLUSION

For the foregoing reasons and those set forth in the petition, this Court should grant its Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit in this matter.

Respectfully submitted,
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JUDY PREVOST, GERALD KOLINSKY, Compensation Commissioner, Eighth District,State of Connecticut; JOHN A. ARCUDI, Chairman, Board of Compensation Commissioners,State of Connecticut; RICHARD BLUMENTHAL, Attorney General, State of Connecticut,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX TO PETITIONER'S REPLY BRIEF

37 D.C. Reg. 6890
(D.C. Code § 36-307(a-1))(1990)

(a-1)(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this act.

(2) For purposes of this subsection the phrase "eligible to receive" means:

(A) An employee is away from work due to a job related injury for which the employee has filed a claim for workers' compensation benefits under this act; or

(B) An employer has knowledge of a job related injury of an employee who is away from work due to the job related injury pursuant to which workers' compensation benefits may become due under section 16.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this act, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

(5) An employer shall be reimbursed for the provision of health insurance coverage required by this subsection from the special fund

established in section 41. If an employer fails to provide health insurance coverage and an employee subsequently procures the insurance coverage and receives reimbursement for the procurement of insurance coverage from the employer pursuant to subsection (d) of this section, the employer shall be reimbursed from the special fund only for the amount that the employer would have paid for the coverage if the employer had provided the coverage.

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BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

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BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

The National Association of Manufacturers of the United States of America ("NAM"), with the consent of the parties, files this brief as *amicus curiae* in support of the petitioner.[1]

[1]Letters of consent are on file with the Clerk. Counsel for Respondents indicated receipt of the corrected version of the Petition for Writ of Certiorari on February 7, 1991. This brief is timely if filed on or before March 11, 1991, under Rule 15.2.

STATEMENT OF INTEREST

NAM is a non-profit voluntary business association of approximately 12,500 manufacturing and related business concerns. Its members employ approximately 85 percent of all workers in the nation's manufacturing sector and produce more than 80 percent of the nation's manufactured goods. As employers, NAM's members provide a wide range of employee benefits under benefit plans that are regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), and each company is directly affected by state laws that interfere with those plans and the ability of the company to offer them to employees.

NAM believes that private employee benefit plans with their inherent flexibility to adapt to the almost infinite variety of requirements of different employees and employers should be encouraged to grow and prosper by favorable government policies and practices. State laws and regulations, if not properly constrained, can curtail the significant contribution that such plans make to both individual economic security and the entire economy, and can substantially interfere with the competitive position of a company both in selling its products and in attracting a quality work force.

This case involves whether Connecticut can require employers that provide benefits under ERISA benefit plans to make those benefits available to former employees long after those employees have left the company. Employers without employee benefit plans are under no similar compulsion. Thus, if not reversed the ruling of the court below will not only compound the financial and administrative burdens on companies that provide ERISA benefit plans, but also will touch off a flurry of activity in legislatures around the country to dramatically expand eligibility for ERISA plans

that are currently in effect.

NAM believes that this brief will offer the Court a unique perspective that underscores the need for a review of the decision of the United States Court of Appeals for the Second Circuit.

SUMMARY OF ARGUMENT

The Connecticut statute being challenged in this case requires employers who sponsor employee welfare benefit plans to provide "equivalent" coverage to all employees, including former employees, who are eligible for or are receiving workers' compensation in Connecticut. This mandate under Connecticut law can continue for the life of the employee. The statute requires that employee welfare benefits be provided to a larger eligible group and for a longer period of time than the employer envisioned when it established the plans, and gives a free ride to residents of Connecticut who happen to work for companies that provide employee welfare benefits through ERISA plans.

This free ride can have a significant effect on the internal costs faced by a company, thus affecting the competitiveness of the company, the viability of the employer's welfare benefit plans, and the variety and amount of benefits offered to employees around the country. The Connecticut law bootstraps a larger population into coverage under an employer's ERISA plan, forcing companies to consider reining in company-wide ERISA benefits to satisfy the supplementary requirements of Connecticut law. Congress adopted the broadly-worded ERISA preemption provision to prevent this kind of back-door mandated benefits tactic.

This issue is of paramount importance for several

reasons. In itself, this case involves substantial company liability under Connecticut law. The Second Circuit's opinion, if unchecked, could expose all employer-provided ERISA plans to substantial supplementary eligibility requirements under state laws around the country. The opinion misreads the limited exception of this Court's *Shaw* decision, and threatens to allow states to require free rides on all sorts of benefit plans under the guise of state workers' compensation, unemployment compensation and disability insurance law. ERISA benefits of many kinds that are routinely provided by employers, such as life insurance, health insurance and pensions will be affected by the approach taken by Connecticut's legislature.

ARGUMENT

I. THE SECOND CIRCUIT DECISION IS AT ODDS WITH THIS COURT'S DECISION IN *SHAW*

The State of Connecticut adopted the workers' compensation statute being challenged in this case to ensure that employees injured on the job continue to receive accident and health insurance or life insurance benefits they were receiving while working. The law requires employers that sponsor employee welfare benefit plans to provide "equivalent" coverage to all employees who are eligible to receive or are receiving workers' compensation benefits in Connecticut.[2]

The Second Circuit held that such a law relates to ERISA plans and is preempted unless the law is saved from

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[2]CONN. GEN. STAT. ANN. § 31-284b(a) (West 1987).

preemption by 29 U.S.C. § 1003(b)(3).[3] That court also held, purportedly in accordance with this Court's ruling in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), that the Connecticut law is saved from premption because a Connecticut employer could create a separate injured employee's plan as an "extension" of its ERISA plan designed solely for the purpose of complying with the Connecticut law.[4]

The *Shaw* case involved a state requirement that employers pay *specified* disability benefits, i.e., $95 per week or one-half of the employee's weekly wages, to eligible employees. This mandated benefit was imposed regardless of whether the employer had an ERISA plan. This Court ruled that since the state could mandate this specific benefit to be provided separately from the employer's ERISA plan, the employer could, at its own option, just as well incorporate the benefit into its ERISA plan.[5]

However, in the instant case, Connecticut is not mandating a *specified* benefit; rather, it demands that benefits under *existing* employee benefit plans, if any, be made available to "employees" as they are defined under Connecticut workers' compensation law. These benefits could range from complete health care and life insurance coverage all the way down to nothing. Thus, Connecticut does not specify an across-the-board benefit that is independent of benefits available under the employer's ERISA plan. The Second Circuit misread *Shaw* to allow states to mandate the extension of ERISA benefits to unemployed workers. In reality, *Shaw* allows

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[3]915 F.2d 787, 791-92, Pet. App. at A9-10.

[4]*Id.* at 793, Pet. App. at A13.

[5]*Id.*

ERISA plans to incorporate *otherwise legitimate* state-mandated benefits into them, thus easing the administration of mandated benefits by employers. The Second Circuit's interpretation of *Shaw* is clearly at odds with that opinion and should be reviewed.

II. THE CONNECTICUT STATUTE EXEMPLIFIES ONLY A PORTION OF THE BROAD EXCEPTION CREATED BY THE SECOND CIRCUIT

ERISA benefits that are routinely provided by employers and that are expressly drawn into the state's workers' compensation requirement include accident, health and life insurance.[6] Connecticut, or any other state, might also mandate that other ERISA benefits, such as pension benefits, be continued for all persons eligible for workers' compensation. Thus, even though Connecticut is concerned only with health, accident and life insurance, a state law could attach itself to *all* kinds of ERISA benefits.

In addition, although the Connecticut statute under review only involves benefits under a workers' compensation law, the language of Section 4(b)(3) of ERISA exempting certain benefit plans encompasses plans maintained solely to comply with unemployment compensation or disability insurance laws as well. Thus, the Second Circuit's ruling could allow a state to require companies to provide similar benefits to *unemployed* workers without running afoul of ERISA. Similarly, in those states where disability insurance

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[6]CONN. GEN. STAT. ANN. § 31-284b(a) (West 1987).

laws provide benefits,[7] employers could face similar obligations to provide ERISA benefits to eligible residents. Whether Congress intended for states to be able to free-ride on ERISA plans for these purposes is a fundamental issue in benefits law, and this case presents a proper vehicle for further resolution of how such laws should be interpreted.

III. THERE WILL BE PRESSURE FOR OTHER STATES TO BURDEN ERISA PLANS

The Second Circuit's ruling may encourage expansive legislative activity in other states. It can certainly be expected that other states will feel considerable pressure to keep the burden of dramatically increasing health-care costs on employer-funded plans. They will also feel an obligation from constituents to provide benefits comparable to those of other states. Thus, because Connecticut's statute has been validated by a United States court of appeals, other states are likely to move ahead in this area. Legal challenges to these new statutes can be expected to take the time and resources of all affected, and this Court's intervention at this point would be quite positive in defining the limits on this activity.

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[7]The *Shaw* case itself involved benefits for disabilities arising from *nonoccupational* injuries and illnesses, rather than workers' compensation benefits. *See* 463 U.S. 85, 89 (1983). Several states currently have similar disability benefits laws that might be amended to provide benefits based on ERISA plans. *See, e.g.*, CAL. UNEMP. INS. CODE § 2627 (West 1986); HAW. REV. STAT. § 392-21 (1985); N.J. STAT. ANN. §§ 43:21-29 & 43:21-37 (West 1962 & Supp. 1990); N.Y. WORK. COMP. LAW § 204 (McKinney 1965 & Supp. 1991).

IV. STATUTES LIKE CONNECTICUT'S CREATE INTOLERABLE ADMINISTRATIVE PROBLEMS

As this Court recognized in *Shaw*, "[o]bligating the employer to satisfy the varied and perhaps conflicting requirements of particular state fair employment laws . . . would make administration of a nationwide plan more difficult."[8] This in turn would produce "considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."[9]

Congress adopted the ERISA preemption provision to prevent this kind of back-door attempt to regulate core ERISA concerns.[10] Because congressional intent is fundamental in any analysis of preemption,[11] the Second Circuit should have considered the clear purpose of the conspicuously broad preemption provision as reflected in the legislative history.[12] This Court has regularly repeated Congress's intent to establish a uniform administrative scheme for employee benefit plans, and it looks askance at any law that

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[8]463 U.S. at 105 n.25.

[9]*Fort Halifax Packing Co. v Coyne*, 482 U.S. 1, 11 (1987).

[10]*See Northern Group Services, Inc. v. Auto Owners Ins. Co.*, 833 F.2d 85, 91-95 (6th Cir. 1987), *cert. denied*, 486 U.S. 1017 (1988). *Cf. Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987) ("the express preemption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'")

[11] *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 747 (1985).

[12]*See FMC Corp. v. Holliday*, 111 S. Ct. 403, 407 (1990).

requires a plan to keep certain records in some states but not in others, to make certain benefits available in some states but not in others, or to process claims in a certain way in some states but not in others.[13]

This Court rejected a state law that prohibited offsetting worker compensation payments against pension benefits because the law would require the employer to devise and operate a system for processing claims and paying benefits with different formulae in different states.[14] The case at bar involves a state requirement for maintaining benefits and processing claims with the same resulting interstate inconsistencies.

Many employers offer a variety of health benefit options, such as a selection of health maintenance organizations (HMOs) or other group insurance plans, each with different costs, benefits and requirements. In order for a company to comply with Connecticut's law by establishing "a separately administered plan," it would have to look not to specific benefits mandated by Connecticut law, but rather to the terms of its own plan or plans. Any change in an existing ERISA plan would trigger an obligation to amend a separate plan to provide "equivalent" benefits. For example, if an employer lowered the deductible amount in an ERISA plan one year, the change could lead to liability if the employer does not provide equivalent coverage in its separate plan. In another year, if the employer changed the percentage of the premium paid by the employees, a similar change must be made in its separate plan. If the company

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[13]*Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987).

[14]*Id.* at 10 (discussing *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)).

should then alter a plan's requirement relating to second medical opinions for surgery, it must then make sure that every separately administered plan established under state law requirements provide equivalent benefits.

Litigation over whether changes in benefits were provided, whether changes were made, and whether they were in fact "equivalent" will mean that a separate plan is not in fact practical. This problem is compounded by the possibility that fifty states could adopt comparable statutes, and "equivalent" plans set up in each state would all have to be modified whenever there is a change in an employer's ERISA plan. This is exactly the result Congress intended to prevent.

V. THE CONNECTICUT LAW SUBJECTS EMPLOYERS TO SUBSTANTIAL COSTS

If this decision is a proper reading of the exception to the general rule that state laws relating to ERISA plans are preempted, it will have a substantial impact both in Connecticut and around the country. In Connecticut, workers are eligible to receive certain workers' compensation benefits for life.[15] Thus, an employer has to provide its regular ERISA plan benefits to workers that may have long since left the workforce. This requirement will clearly have a significant impact on all companies, both large and small.

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[15] CONN. GEN. STAT. ANN. §§ 31-308(a), (d) & 31-307 (West 1987) (eligibility for partial incapacity for up to 780 weeks; eligibility for total incapacity limited only to the period of incapacity); J. Asselin, *The Connecticut Workers' Compensation Practice Manual* 126 (1985). *See Forkas v. International Silver Co.*, 100 Conn. 417 (1924); *Greenwood v. Luby*, 105 Conn. 398, 400 (1926).

This statute can have a significant effect on the internal costs faced by a company, thus affecting the competitiveness of the company, the viability of the employer's welfare benefit plans, and the company's willingness to bear the added risk arising out of the presence of a workforce in Connecticut. The Connecticut law bootstraps a larger population into coverage under an employer's ERISA plan for a longer period of time, forcing companies to consider reining in company-wide ERISA benefits to satisfy the supplementary requirements of Connecticut law. Moreover, because costs per worker are increased, companies may be forced to reduce these costs by laying workers off, or not hiring new workers, or by reducing other benefits. Therefore, these benefits will not necessarily raise the welfare of workers as a whole, but may even have the opposite effect.

The statute also gives a free ride to residents of Connecticut who happen to work for companies that provide employee welfare benefits through ERISA plans. This free ride occurs when state residents benefit from eligibility criteria, mandated by the state government, that take advantage of contributions made to the plan either by employees outside the state or by the company as a whole.

In short, the Second Circuit's ruling will legitimize the power of a state to require that ERISA plan benefits be made available to an extent far exceeding the expectations of plan sponsors, trustees or beneficiaries.

CONCLUSION

The Supreme Court should take this opportunity to provide states, employers and employees with a decision that clearly limits the extent to which ERISA plan benefits may be

expanded by state law. If states are allowed to freely roam among ERISA-governed employee benefits programs under the guise of workers' compensation law, an important national policy promoting the development of wide-ranging benefits packages will be seriously distorted and undermined. This could cause a retrenchment in the breadth and level of employee benefits at a time when international and domestic competition, recessionary pressures and the impact of health care costs are so strong.

We urge that the petition for a writ of certiorari be granted.

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No. 90-1249

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In The
Supreme Court of the United States
October Term, 1990

R.R. DONNELLEY & SONS COMPANY,
Petitioner,

v.

JUDY PREVOST,
GERALD KOLINSKY, Compensation Commissioner,
Eighth District, State of Connecticut;
JOHN A. ARCUDI, Chairman,
Board of Compensation Commissioners, State of Connecticut;
RICHARD BLUMENTHAL, Attorney General,
State of Connecticut
Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The Second Circuit

BRIEF OF *AMICUS CURIAE* CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS

The Connecticut Business and Industry Association ("CBIA") is the largest business organization in the State of Connecticut, having approximately 7,000 members that employ a total work force of over 700,000 employees. CBIA presents the views of its members on public policy and legal issues to legislative and judicial authorities.

As discussed in this brief, the Connecticut statute challenged in this case imposes significant and escalating costs on all or nearly all of CBIA's members.

CBIA has the consent of all the parties to the filing of this brief.

SUMMARY OF ARGUMENT

A Connecticut statute, Conn. Gen. Stat. §31-284b, requires that all employers providing accident, life or health insurance benefits to their active employees under plans regulated by ERISA[1] must provide the same benefits to their former employees who receive workers' compensation. The employer can provide the benefits by extending its ERISA plan to cover the disabled workers or by providing an alternative plan. With irrelevant exceptions, ERISA's "supersedure clause," 29 U.S.C. §1144, preempts all state laws which "relate to any employee benefit plan" covered by ERISA. The courts below found that §31-284b relates to ERISA-covered benefit plans but nonetheless held that it is not preempted.

ERISA preempts the Connecticut statute. The Second Circuit's decision is inconsistent with the statutory language and structure. It misreads ERISA by adding a broad new exception to the comprehensive supersedure clause drafted by Congress. The court also misread or ignored several of this Court's decisions.

Unless reversed by this Court, the decision below will have repercussions far beyond whether Petitioner must continue to pay

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[1] Employee Retirement Income Security Act of 1974, as amended ("ERISA"), codified at 29 U.S. C. §1001 *et seq.*

for Respondent Prevost's insurance. When it wrote ERISA, Congress intended to encourage employers to provide adequately for the insurance and retirement needs of their employers. When it wrote ERISA's sweeping preemption clause, Congress intended to establish a single, national law of benefits programs and intended to prevent the states from creating conflicting programs. The Second Circuit's decision undercuts both Congressional purposes. By permitting the states to impose burdens on employers in proportion to the benefits provided by their plans, the decision will discourage employers from providing generous benefits. By opening a major loophole in the supersedure clause, the decision will allow the states to balkanize the law of benefit plans.

ARGUMENT: REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE LOGIC OF ERISA AND PRIOR DECISIONS OF THIS COURT.

The essential flaw in the Second Circuit's analysis is that it validates and upholds state laws which relate to ERISA plans by imposing burdens on employers in proportion to the generosity of their ERISA plans.

The Court of Appeals interpreted this Court's decision in *Shaw v. Delta Airlines*, 463 U.S. 85, 106-108, (1983) to imply a novel exception to the supersedure clause.[2] The court found the basis for that supposed exception in 29 U.S.C. §1003(b)(3), which exempts from ERISA's coverage plans which are "maintained solely for the purpose of complying with applicable workmen's compensation laws." The Second Circuit read this provision as if it said "nothing in this Act shall be construed to exempt any person from a state law which regulates workmen's compensation." However, §1003(b)(3) is an exception, not to the supersedure clause, but to the definition of the kinds of employee benefit plans covered by ERISA. As the Circuit Court itself noted, A12, this Court has held

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[2] No party has contended that any of the statutory exceptions to the supersedure clause listed in §1144(b) saves §31-284b.

that "§1003(b)(3) excludes 'plans,' not portions of plans, from ERISA coverage; . . . . [T]he purpose of the entire plan must be to comply with an applicable [workmen's compensation] law." *Shaw*, 463 U.S. at 107. Because, as the Second Circuit itself held, A9, §31-284b is a law which "relates to" ERISA-covered plans, it cannot be saved by a provision which saves state laws only if they relate "solely" to a kind of plan not covered by ERISA.

Of course, as this Court noted in *Shaw*, §1003(b)(3) permits a state to require an employer to maintain a separate non-ERISA plan to provide specific workers' compensation benefits. That being so, this Court suggested in dictum that a state could also permit an employer to choose between providing the specified benefits by providing a separate plan or by extending its ERISA-covered plan. *Shaw*, 463 U.S. at 108. However, *Shaw* dealt with a state requirement that employers provide benefits specified in terms entirely independent of the provisions of the employers' ERISA-covered plans.[3]

In that respect *Shaw* is crucially different from the instant case. Here, Connecticut has measured the required extra workers' compensation benefits entirely by the benefits that employers provide under their ERISA-covered plans. Under §31-284b, an employer that provides especially generous benefits to its active workers must also pay to extend those benefits to its former employees who are on workers' compensation. By contrast, an employer that provides minimal benefits under its ERISA plan incurs minimal additional costs under §31-284b, while an employer that provides no ERISA benefits incurs no costs at all. For practical purposes, therefore, it is as if Connecticut had decided to fund benefits for persons on workers' compensation by imposing a tax on the amounts employers spent on their ERISA plans. Such

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[3] *Shaw* dealt with a New York Disability Benefits Law, N.Y. Work. Comp. Law §§200-242 (McKinney 1965 and Supp. 1982-83), which required employers to pay to employees unable to work because of nonoccupational injuries or illness (defined to include pregnancy) the lesser of $95 per week or one half their average weekly wage. *Shaw*, 463 U.S. at 89 - 90.

a tax would clearly "relate to" ERISA-covered plans and would be preempted under §1144(a). *National Carriers' Conference Committee v. Heffernan*, 454 F. Supp. 914 (D. Conn. 1978); *Birdsong v. Olson*, 708 F.Supp. 792 (W.D. Tex. 1989).

II. THE DECISION BELOW PERMITS STATES TO IMPOSE COSTS AND CONFLICTING OBLIGATIONS ON EMPLOYERS THAT OFFER ERISA-COVERED PLANS.

A. *The Decision Below Permits States to Deter Employers from Providing Generous ERISA Benefit Plans by Imposing Great Costs on Those That Do.*

When it adopted ERISA, Congress intended to encourage employers and employees to create plans which would adequately protect employees from illness and would provide employees with decent retirements. *See* 29 U.S.C. §1001(a). The decision below has exactly the opposite effect. It discourages employers from providing generous or even adequate benefits to their active employees by permitting the state to impose additional charges proportional to the amount the plan costs the employer. In the long run, as medical costs grow, the disincentives will grow and so plans are likely to become less adequate.

1. *The Second Circuit's Decision Penalizes Connecticut Employers That Provide Generous ERISA Benefits.*

Donnelley is not the only employer that faces higher costs as a result of §31-284b. The statute increases the costs of almost every employer in Connecticut, including all or nearly all of CBIA's members, by adding to the ever-rising expense of health care. Indeed, it is the employers that provide the most benefits for their employees that will be forced to pay the most increased costs.

Moreover, §31-284b creates incentives that will keep the costs of health care and workers' compensation rising. Given the enormous cost of health care today, one of the greatest incentives to work is to obtain health insurance that one could not otherwise

afford. Under §31-284b employers are required to continue paying health benefits to workers who are collecting permanent, partial disability awards, including persons who are capable of returning to work full time. Section 31-284b not only removes a reason for going back to work, it discourages such workers from going off workers' compensation because doing so would cost them their health care benefits from their former employer.[4]

It will cost about $18,900,000 this year to provide health insurance to Connecticut employees while they are eligible to receive workers' compensation benefits. This is calculated as follows: The average annual cost of health insurance paid by employers in Connecticut was approximately $2,820.00 per worker in 1989 (the most recent year for which statistics are available).[5] Assuming the average worker works 235 days per year,[6] the cost of insuring a worker was about $12.00 per worker per work day in 1989. The Connecticut Labor Department reported that in 1989 Connecticut workers lost 1,191,000 days of work due to work-related injuries for which they were eligible for workers' compensation benefits.[7] This number multiplied by the cost of coverage per worker per day results in a total cost of about

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[4] In Connecticut a person on workers' compensation is entitled to two thirds of his regular wages up to $719.00 per week, *see* Conn. Gen. Stat. §31-309; and, unlike his wages, his workers' compensation benefits, as well as amounts he receives through accident and health insurance, are tax-free. 26 U.S.C. §104(a). Thus a person on workers' compensation may make as much money as if he were still working.

[5] Levick, *Health care costs rise sharply for state firms*, HARTFORD COURANT, Feb. 1, 1990, p. D1 reporting Health Care Benefits Survey by A. Foster Higgins & Co., Inc.

[6] Assuming 49 weeks of work at 5 days per week, minus 10 holidays.

[7] *Connecticut Work Injuries Top 129,000 in 1989*, THE CONNECTICUT BUSINESS DECISION MAKER, (a publication of the Division of Worker Education of the Conn. Dept. of Labor), Jan. 1991, p. 1, citing statistics complied by Conn. Dept. of Labor.

$14,292,000 for 1989. Making the conservative assumption that Connecticut's health insurance costs will rise at no more than 15% per year, somewhat less than in recent years,[8] the cost for 1991 will be about $18,900,000.

Of course, even apart from the legal obligations of §31-284b, some firms will provide health insurance coverage for their workers for at least some of the time they are eligible for workers' compensation. Other employers will avoid all costs based on their benefit packages by offering no benefits at all. Nonetheless, the statute will impose additional costs on many employers over and above their voluntary ERISA plans. These costs are in proportion to the amount of benefits each employer's ERISA plan provides.

Section 31-284b interferes with those ERISA plans which are the result of collective bargaining among employers and employees.[9] Whether or not the plan results from collective bargaining, the money §31-284b requires is money which becomes unavailable to fund other benefits. The money diverted by §31-284b will also be unavailable for wages, new jobs and business expansion. In economic terms, §31-284b amounts to a hidden tax on employers in proportion to their expenditures for ERISA plans.

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[8] Costs rose 15.7% from 1988 to 1989, Levick, *supra*, and rose 17.1% nationally from 1989 to 1990, Geisel, *Employers' health costs rise 17.1%*, BUSINESS INSURANCE, Jan. 28, 1991, p. 1.

[9] As this Court has held,

> Where, as here, the pension plans emerge from collective bargaining, the additional federal interest in precluding state interference with labor-management negotiations calls for pre-emption of state efforts to regulate pension terms. [Citations omitted.] As a subject of collective bargaining, pension terms themselves become expressions of federal law, requiring pre-emption of intrusive state law.

Alessi v. Raybestos-Manhattan, Inc. 451 U.S. at 525-526. Although Donnelley's plan has not been collectively bargained for, §31-284b also applies to ERISA plans which do result from such negotiation.

2. *The Decision Below Sets a Precedent Which Would Permit Other States to Burden Employers in Proportion to the Generosity of Their ERISA Plans.*

If the Second Circuit's decision is allowed to stand, it will set a precedent that Connecticut and other states could rely on in passing similar laws imposing costs on employers measured by their expenditures on ERISA benefit plans.

The impact of the decision below is not limited to workers' compensation. ERISA §1003(b)(3), upon which the decision depends, also exempts from ERISA coverage plans which are "maintained solely for the purpose of complying with . . . unemployment compensation or disability insurance laws." Under the Second Circuit's analysis, a state could pass a statute it called an "unemployment compensation law" that required an employer that lays off workers to continue to provide, at the employers' expense, the same level of insurance and even pension benefits provided under the firm's ERISA plan, if any, for as long as the worker is unemployed, potentially for years. Such laws would be valid, on the Second Circuit's theory, as long as the state gave the employer a choice between extending the firm's ERISA plan to the laid-off workers or purchasing a separate plan. Similarly, provided that a state offered employers the choice between extending an ERISA plan or buying another plan, the state could adopt a "disability insurance law" which required an employer to pay an employee benefits "equivalent" to those under the firms' ERISA plan for as long as an employee is disabled, even for the rest of his life if the disability is permanent. Such laws would "relate to" ERISA plans in that the employers' obligation would depend on whether their firms had ERISA plans and the generosity of their terms. *See Ingersoll-Rand Co. v. McClendon*, --- U.S. ---, 111 S.Ct. 478, 483 (1990) (state law cause of action preempted because it depended on existence of ERISA plan). Such laws could bankrupt ERISA plans by requiring them to make huge, unanticipated expenditures that have not been properly funded, and could threaten the survival of employers that sponsor unfunded plans.

Moreover, the Second Circuit's analysis would open a yawning loophole in the supersedure clause. Merely by codifying a statute as "workmen's compensation," "unemployment compensation" or "disability insurance" and by offering employers the option of purchasing a second plan, a state could enact exactly the same type of regulations of ERISA plans that the courts have previously held preempted by ERISA.

The contrast between the outcome in this case below and the outcome in *Stone & Webster Engineering Corp. v. Ilsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983), illustrates this problem. The court below acknowledged that "§31-284b was enacted in response to *Stone and Webster*," A4, and it has the same effect on ERISA plans as the earlier statute held preempted by ERISA in that case, A9. Yet because §31-284b offers employers the option of purchasing a separate plan to meet its requirements, the court held that it was not preempted, even though it admittedly related to ERISA plans, *id.* The court did not even require that the state show that this option is practical. In fact, it is not. The economics of health insurance plans are such that it would be much more expensive for a firm to separately insure a few disabled workers than to extend the coverage of its large group ERISA benefits plan. Covering workers' compensation recipients with a separate plan would invite litigation over whether the two plans are really "equivalent" and whether they remain so when one or the other is changed. The Second Circuit's approach exalts form over substance. But as this Court has pointed out, "ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the preemption provision." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1980).

B. *The Decision Below Allows States To Impose Inconsistent Requirements on ERISA-Covered Plans.*

Congress intended ERISA's preemption clause to establish a

national, uniform regulatory scheme for employee benefit plans.[10] ERISA's preemption clause is "deliberately expansive, and designed to establish pension plan regulation as exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). This Court has "not hesitated to apply ERISA's pre-emption clause to state laws that risk subjecting plan administrators to conflicting state regulations," *FMC Corp. v. Holliday*, --- U.S. ---, 111 S.Ct. 403, 408 (1990), *citing Shaw* and *Alessi*, or to a "patchwork scheme of regulation" which would cause "inefficiencies in benefit program operation," *id., citing Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10, 11 (1987).

The decision below would frustrate this Congressional intent. Each state could impose its own conflicting set of ERISA plan regulations through the loophole opened by the Second Circuit. While Connecticut requires employers to extend benefits in perpetuity to former employees receiving workers' compensation, another state might require only two years of coverage, and a third might require nothing for workers' compensation recipients while requiring employers to extend benefits to all laid-off workers until they find new jobs. A firm like Petitioner Donnelley, which does business in several states, could be whipsawed among these conflicting regulations. As this Court stated in *Shaw*:

> An employer with employees in several States would find its plan subject to a different jurisdictional pattern of regulation in each State, depending on what benefits the State mandated under disability, workmen's compensation and unemployment compensation laws. The administrative impracticality of permitting mutually exclusive pockets of federal and state

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[10] Sen. Williams, the Senate sponsor of ERISA, explained that the supersedure clause was "intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in the broadest sense to all actions of State or local governments . . . ." 120 Cong. Rec. 29,933 (1974) quoted in *Shaw v. Delta Air Lines*, 463 U.S. at 99.

jurisdiction within a plan is apparent.

463 U.S. at 107. This chaos of interstate conflict is exactly what the Second Circuit's misreading of *Shaw* will produce and exactly what Congress intended to prevent.

III. CONCLUSION

For the reasons set forth above, CBIA respectfully requests that this Court grant the petition for writ of certiorari and reverse the decision of the Second Circuit.

DATED: Boston, Massachusetts: March 8, 1991.

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